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SEP 12 2012

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September 12, 2012

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Public Record**

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

RE: Finance Docket No. 35675, *National Railroad Passenger Corporation and CSX Transportation, Inc.—Petition for Declaratory Order*

EXPEDITED HANDLING REQUESTED

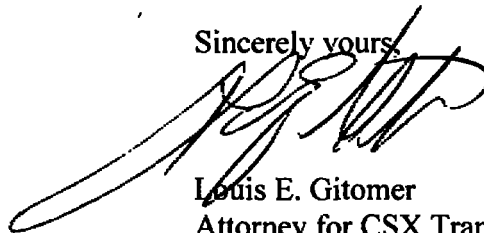
Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Petition for Declaratory Order jointly filed by the National Railroad Passenger Corporation and CSX Transportation, Inc. Also enclosed is a disc with the Petition in Word and pdf format and the filing fee of \$1,400 pursuant to 49 C.F.R. 1002.2(f)(58)(ii).

Please time and date stamp a copy of this letter and the Petition and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

FILED

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**SURFACE
TRANSPORTATION BOARD**

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**SURFACE
TRANSPORTATION BOARD**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35675

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NATIONAL RAILROAD PASSENGER CORPORATION AND CSX TRANSPORTATION,
INC.— PETITION FOR DECLARATORY ORDER

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Attorneys for: CSX Transportation, Inc.

Dated: September 12, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35675

NATIONAL RAILROAD PASSENGER CORPORATION AND CSX TRANSPORTATION,
INC.— PETITION FOR DECLARATORY ORDER

The National Railroad Passenger Corporation (“Amtrak”) and CSX Transportation, Inc. (“CSXT”), collectively “Petitioners,” respectfully request the Surface Transportation Board (the “Board”) to commence a declaratory order proceeding to terminate a controversy or remove uncertainty by confirming that the Board does not have regulatory authority¹ over the lease to Amtrak of CSXT’s Hudson Line, as described in the next paragraph and shown on the map in Exhibit A (the “Proposed Transaction”).

CSXT and Amtrak will effectuate the lease of the Hudson Line through the Hudson Line Operating, Management and Land and Track Lease Agreement (the “Lease Agreement”), attached hereto in Exhibit B.² The Hudson Line includes (1) a line owned by CSXT between the westbound signal at Hoffmans, NY, milepost 169.77, and Poughkeepsie, NY, milepost 75.7, exclusive of certain defined properties, e.g., the freight yard in Hudson, NY and

¹ In *Mass. Dep’t of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc.*, FD 35312, slip op. at 3 (STB served May 3, 2010) *aff’d sub nom. Bhd. Of R.R. Signalman v. STB*, 638 F.3d 807 (D.C. Cir. 2011), the Board stated “that the transaction as currently structured does not require Board authorization. The Board will continue to have jurisdiction over the rail property, even if it concludes, as discussed below, that it need not exercise regulatory authority over a proposed transaction.”

² The exhibits to the Lease Agreement have not been included in this filing, but will be provided to the Board upon request.

sidetracks,³ and (2) all facilities of CSXT that are used in the operation of the Amtrak-owned “Post Road” line of railroad between approximately milepost 187.4 in Niverville, NY and milepost 199.5 in Rensselaer, NY.

Under the Lease Agreement, the Hudson Line shall be used for the conduct of rail passenger service and rail freight service, as is done today. Subject to the rights of the Delaware and Hudson Railway Company, Inc. (“D&H”), as described below, CSXT shall have the exclusive right to use the Hudson Line for the provision of Rail Freight Service and to operate CSXT’s trains, locomotives, rail cars and rail equipment with its own crews. Amtrak shall have the exclusive right to use the Hudson Line for the provision of rail passenger service and all other functions that Amtrak is legally permitted to perform, including the transportation of mail and express as provided by law, the installation of a Positive Train Control System, and operating rail passenger service on the Hudson Line at speeds to be determined by Amtrak, provided however that changes in track conditions required for such speeds shall reflect Amtrak’s reasonable endeavors to accommodate rail freight service and shall not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line. Section 1(a) of the Lease. Section 1 also provides that “Amtrak shall not provide common carrier or contract freight service nor grant trackage, haulage or other freight rights over the Hudson Line to any other carrier or third party without the written consent of CSXT.”

CSXT will retain the common carrier freight obligation over the Hudson Line. Amtrak will become responsible for all maintenance, dispatching, and capital improvements, including

³ A sidetrack is defined in Appendix A of the Lease Agreement as tracks on CSXT Property or real property owned by a third party, on excluded parcels and/or beyond the border of the Hudson Line (with precise cut points to be mutually agreed to), and which are used to provide Rail Freight Service over such tracks to industries, customers and facilities located along the Hudson Line.

those for the purpose of improving intercity rail passenger service over the Hudson Line.⁴

Amtrak and CSXT also respectfully request the Board to grant the requested relief and serve a decision that will be effective no later than October 15, 2012, so that the transaction can be completed by November 5, 2012.

BACKGROUND

CSXT acquired the Hudson Line from Consolidated Rail Corporation. *CSX Corp. et al.-Control-Conrail Inc., et al.*, 3 S.T.B. 196 (1998) (the “*Conrail Decision*”). As required in the *Conrail Decision* at 283, CSXT granted the D&H trackage rights over much of the Hudson Line. Subsequently, in order to provide more efficient and cost effective service, CSXT and D&H entered a joint use agreement for the Hudson Line, which agreement remains in effect today. See *CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc.-Joint Use Agreement*, STB Docket No. FD 35348 (STB served October 22, 2010). Amtrak operated over the Hudson line prior to CSXT’s acquisition and continues to operate over the Hudson Line today.

CSXT operates approximately 2-5 trains per day over the Hudson Line.⁵ Amtrak currently operates 26 weekday, 22 Saturday and 23 Sunday, intercity passenger trains on all or portions of the Hudson Line, plus two trains daily on the “Post Road,” as referenced in the second paragraph of this Petition.

CSXT is a rail freight operator. It does not operate passenger service over the Hudson Line. In addition, CSXT owns and operates a parallel line west of the Hudson River between

⁴ CSXT and Amtrak have reached agreements with their respective unions under the Railway Labor Act to address the effects of the Proposed Transaction on employees. Although Petitioners contend that the Proposed Transaction is not subject to the Board’s jurisdiction, CSXT has determined to offer as part of that bargaining the equivalent of the economic benefits in the Mendocino Coast conditions, *Mendocino Coast Ry., Inc. -Lease and Operate*, 360 I.C.C. 653 (1980), to affected employees on the Hudson Line.

⁵ D&H previously operated two trains per week over the Hudson Line. The freight cars from those trains are now contained in CSXT trains as a result of the referenced joint use agreement.

Albany and New York City and northern New Jersey. The line west of the Hudson carries about 95 percent of the rail freight traffic handled by CSXT between northern New Jersey and New York City on the one hand and the Midwest on the other and is CSXT's primary route for that traffic. Because of the volume of traffic on its line west of the Hudson River, CSXT allocates more of its capital resources to that line than to the Hudson Line.

The New York State Department of Transportation ("NYSDOT") plans to use federal funds obtained pursuant to the Passenger Rail Investment and Improvement Act of 2008 and other public funds to improve intercity passenger rail service over the Hudson Line.

CSXT, Amtrak, and NYSDOT entered discussions in order to improve the facilities on the Hudson Line for continued and improved rail passenger service and continued rail freight service. As a result of those discussions, the parties decided that a lease of the Hudson Line to Amtrak from CSXT, as long as CSXT retained all freight common carrier rights, would benefit all involved. Amtrak would be the responsible party – the entity in "control" – on the Hudson Line and would enter into a service outcomes agreement with NYSDOT to provide for improved intercity passenger rail service on the Hudson Line, and CSXT would retain the freight common carrier responsibility, subject to the rights of D&H.

In conformity with the discussions, CSXT and Amtrak negotiated the Lease Agreement. Under the terms of the Lease Agreement, Amtrak will manage, direct, dispatch and control the occupation, use, and access to the Line for 25 years with the option for one additional 23 year term. CSXT will retain the common carrier freight obligation.

CSXT, Amtrak, and NYSDOT have negotiated a series of transactions including the Lease Agreement that will enable Amtrak to make certain improvements on the Hudson Line using funds provided by the Federal Railroad Administration ("FRA") and NYSDOT. Under

the agreement, Amtrak, not CSXT, will be the entity in “control” and assume any and all responsibility for FRA-required service outcomes associated with federal rail passenger funding.

Amtrak’s ability to make improvements on the Hudson Line, however, is subject to CSXT’s reserved freight common carrier rights, including performance under existing agreements between CSXT and D&H for certain joint use, haulage and trackage rights on the Hudson Line.⁶

ARGUMENT

Under 5 U.S.C. §554(e) and 49 U.S.C. §721(a), the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. In this instance, Petitioners urge the Board to exercise its authority in order to clarify that the Board does not have regulatory authority over the Proposed Transaction because CSXT will retain the rail freight common carrier obligation while Amtrak will continue to provide rail passenger service and will maintain, dispatch and make capital improvements on the Hudson Line. The Proposed Transaction is similar to *Maine, DOT—Acquisition Exemption, Maine Central Railroad Company*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”), *Wisconsin Department of Transportation—Petition for Declaratory Order—Rail Line in Sheboygan County, WI*, STB Finance Docket No. 35195 (STB served April 22, 2009) (“*WIDOT*”), *State of Michigan Department of Transportation-Acquisition Exemption-Certain Assets of Norfolk Southern Railway Company*, STB FD 35606 (STB served May 8, 2012) (“*MIDOT*”), and *Wisconsin Department of Transportation-Petition for Declaratory Order-Gibson Line in Milwaukee, Wis.*, STB Docket no. FD 35401 (STB served August 15, 2012)

⁶ This includes all residual rights belonging to D&H as a result of the *Conrail Decision*.

(“*WIDOT 2*”). CSXT and Amtrak have elected to follow the procedure under the Board precedent in *WIDOT* and *WIDOT 2* in this proceeding because of the facts of the Proposed Transaction.

The Board does not have regulatory authority over the Proposed Transaction under the principles of *State of Maine* and its progeny. For a transaction to fall outside of the Board’s regulatory authority under *State of Maine* and its progeny: (1) in selling its assets to a passenger rail operator, the freight rail carrier must retain a permanent and exclusive freight rail operating easement, together with the common carrier obligation; and (2) the terms of sale must protect the rail freight carrier from undue interference with the provision of common carrier freight rail service. See *Mass. Dep’t of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc.*, FD 35312, slip op. at 5 (STB served May 3, 2010) (“*Mass. DOT*”) *aff’d sub nom. Bhd. Of R.R. Signalman v. STB*, 638 F.3d 807(D.C. Cir. 2011). As the Board recently stated, the freight carrier “would not be transferring its common carrier obligation” and the transferee would not “be able to hold itself out as a common carrier performing common carrier freight service on the Line.” *WIDOT 2* at 3.

CSXT will retain the right and obligation to provide common carrier service under the Lease Agreement.

Under the Proposed Transaction, CSXT will continue to own the Hudson Line, a greater property interest than an easement. Instead of being granted an easement and retaining the common carrier obligation, CSXT will retain both ownership of the Hudson Line and the common carrier obligation, while leasing the Hudson Line to Amtrak. The Lease Agreement will transfer certain obligations to Amtrak, but CSXT will retain the freight common carrier obligation and the Lease Agreement will not permit Amtrak to interfere with CSXT’s

performance of its freight common carrier operations.

In a typical lease, the railroad lessee leases the property from the railroad lessor and assumes the entire common carrier obligation. While the lessor stops providing service over the leased line, it retains a residual common carrier obligation that springs to life if the lessee discontinues service or otherwise stops providing freight service over the line. The Lease Agreement is different. CSXT is not leasing the freight common carrier rights and obligations to Amtrak. CSXT, as lessor, will continue to own the Hudson Line and to provide common carrier freight service to shippers over the Hudson line under the Lease Agreement. By retaining the right to serve shippers and actually providing service to the shippers, CSXT is retaining rights under the Lease Agreement that are similar to a permanent and exclusive freight rail operating easement. Indeed, under the Lease Agreement, as owner of the Hudson Line, CSXT will retain greater rights than are typically retained in an easement.

The Proposed Transaction is analogous, but not identical, to a typical *State of Maine* proceeding because here CSXT is not selling the Hudson Line to Amtrak. Instead, CSXT is leasing the Hudson Line to Amtrak, but retaining ownership and the freight common carrier obligation. Under the Lease Agreement, CSXT will be able to operate its “trains, locomotives, rail cars and rail equipment thereon with its own crews.” Section 1(a) of the Lease Agreement. There is no provision in the Lease Agreement that permits Amtrak to require CSXT to vacate the Hudson Line. The Lease Agreement provides for CSXT to retain the right and obligation to provide common carrier service on the Hudson Line.

The Lease Agreement protects CSXT from undue interference with the provision of common carrier freight rail service.

Amtrak operates more than five times as many trains per day as CSXT over the Hudson Line. It makes sense for Amtrak to take over the obligations for the management, dispatching, maintenance, and capital improvements of the Hudson Line. Through the Lease Agreement, CSXT contends that it has preserved its ability to provide common carrier freight service over the Hudson Line and to avoid undue interference with its operations from Amtrak. Indeed, “Amtrak shall furnish facilities, tracks, signals and bridges, for CSXT’s provision of Rail Freight Service on the Hudson Line that are substantially the same as and in at least substantially the same manner as provided by CSXT at the Commencement Date.” Section 1(c) of the Lease Agreement.

Amtrak has also entered a service outcomes agreement with NYSDOT so that NYSDOT may be eligible for Federal funding to upgrade the Hudson Line. The Lease Agreement also specifically includes continued performance under existing agreements between CSXT and D&H for certain joint use, haulage, and trackage rights on the Hudson Line as part of the rights retained by CSXT. The Lease Agreement does not grant Amtrak any freight rail operating rights.⁷ Nor does the Lease Agreement grant Amtrak the right to grant trackage rights or any other freight rights without CSXT’s consent, and such consent can be withheld at CSXT’s sole discretion. Section 1(a) of the Lease Agreement.

Under the Lease Agreement, Amtrak will become responsible for maintaining, dispatching and controlling railroad operations, and overseeing capital improvements on the Hudson Line. While granting Amtrak these responsibilities, the Lease Agreement also protects

⁷ Under 49 U.S.C. §24305(a)(1) and (c)(2), Amtrak is specifically permitted to perform services such as transportation of mail and express.

CSXT from undue interference with the provision of common carrier freight rail service. In managing, directing, dispatching and controlling railroad operations on the Hudson Line, “Amtrak shall reasonably endeavor to accommodate Rail Freight Service and shall not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line.” Section 3(a) of the Lease Agreement.

Amtrak will assume the maintenance obligation on the Hudson Line, and in so doing, it must meet or exceed the standards of the FRA for the designated class of track that exists today. In maintaining the Hudson Line, Amtrak must reasonably endeavor to accommodate rail freight services and cannot materially reduce the quality of existing or future freight transportation provided to shippers on the Hudson Line. Under the Lease Agreement, Amtrak must schedule maintenance and improvement work efficiently to minimize potential disruptions to passenger and freight service on the Hudson Line. *See* Section 4 of the Lease Agreement.

CSXT, under the Lease Agreement, has the right to cause Amtrak to make improvements, additions, betterments, retirements, or alterations to the Hudson Line as CSXT deems necessary for rail freight service. Section 5(c) of the Lease Agreement. CSXT also has the right to inspect the Hudson Line. Section 4(c) of the Lease Agreement. Additionally, the Lease Agreement requires that CSXT be responsible for maintaining and repairing CSXT property on the Hudson Line. Section 4(b) of the Lease Agreement.

Because Amtrak is the predominate user of the Hudson Line, it makes sense for Amtrak to be responsible for dispatching functions on the line. Amtrak in consultation with CSXT has developed service plan which will initially document existing passenger and freight service. Both parties will have the right to make operational changes to their respective services. Under the Lease Agreement, Amtrak must reasonably endeavor to accommodate rail freight service and

cannot materially reduce the quality of existing and future freight transportation. Section 3(a) of the Lease Agreement.

The Board has previously found that “[i]f the operating agreement considered as a whole is not likely to impair freight service, the passenger operator’s control over dispatching will not by itself create such an obstacle, because the latter merely implements the former.” *Mass. DOT*, at 10. The terms of the Lease Agreement provide CSXT with safeguards that prevent Amtrak from impairing CSXT’s ability to provide freight service. The Lease Agreement taken as a whole does not impair freight services.

With regard to Amtrak modifications or capital improvements on the Hudson Line, the Lease Agreement requires that CSXT approve such planned modifications or capital improvements. CSXT may justify denial of modifications or capital improvements, if those modifications or capital improvements will unduly interfere with freight rail operations. If the parties cannot reach an agreement that protects freight rail operations and allows for modifications or capital improvements on the Hudson Line, the Lease Agreement requires arbitration of the issue. The Lease Agreement also provides CSXT with a mechanism for implementing CSXT’s requested capital improvements on the Hudson Line. *See* Section 5(c) of the Lease Agreement.

The Lease Agreement at section 8(c) assures CSXT’s clearances on the track. Section 8(f) of the Lease Agreement states that “CSXT shall have the exclusive right to enter into contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the Hudson Line and the CSXT Property ... with a shipper, recipient, and/or other user of Rail Freight Services over a Sidetrack.” In addition, CSXT can use self-help to repair damage to the Hudson Line. Section 10(a) of the

Lease Agreement.

Amtrak has no right to require CSXT to discontinue service over the Hudson line. CSXT's "Discontinuance of Rail Freight Service over the Hudson Line shall be governed by applicable statutory and regulatory authority, including exemption from the requirements to obtain such authority." Section 11(a) of the Lease Agreement. Further, Amtrak shall not "permit the Hudson Line to be used by the public without restriction or in such manner as might reasonably tend to impair ... CSXT's rights and interests." Section 12(a) of the Lease Agreement.

CSXT contends that the Lease Agreement provides significant safeguards that prohibit "undue impediments to the continuation of common carrier freight rail service." *MIDOT* at 4.

In *San Benito Railroad LLC—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company*, STB Finance Docket No. 35225 (STB served June 23, 2011) (*San Benito*), the Board added an additional test when the acquiring party is a private entity. In *San Benito*, the Board stated that there must be a legitimate business justification for the proposed transaction that advances either the preservation of freight rail lines or the promotion of passenger rail operations. *Id. Slip Op.* at 4. While the parties to the Lease Agreement are not similarly situated to the parties in *San Benito*, the Lease Agreement, nevertheless, clearly complies with the *San Benito* test.

This transaction will give Amtrak, the predominate user of the Hudson Line, control of the Hudson Line so that it can undertake modifications and capital improvements that would promote passenger rail operations. The business considerations related to those modifications and improvements will be made by Amtrak and NYSDOT and will be determined largely by Amtrak's business model. Amtrak proposes to assume control of dispatching and maintenance

to improve passenger service over the Hudson Line and coordinate improvements to the Hudson Line with NYSDOT. Among other justifications, a legitimate business justification supporting that assumption is that Amtrak, as the controlling entity, will be responsible for any FRA-required service outcomes agreements and any penalties for non-compliance with the service outcomes agreements. CSXT will continue to own the existing track and materials and real estate. Subject to the rights of D&H, CSXT will be the exclusive freight rail operator and retain the freight common carrier obligation for service over the Hudson Line. Improvements to the Hudson Line fostering improved passenger service will be able to be made without CSXT investment in the Hudson Line.

The Board does not have jurisdiction over Amtrak.

In addition to the *State of Maine* analysis for the Proposed Transaction, the Board's jurisdiction over Amtrak is limited by 49 U.S.C. §24301(c). Under 49 U.S.C. §24301(c), Subsection IV of Title 49, does not apply to Amtrak, with the exceptions of sections 11123 (situations requiring immediate action to serve the public), 11301 (Equipment trusts: recordation; evidence of indebtedness), 11322(a) (Limitations on pooling and division of transportation or earnings), 11502 (Withholding State and local income tax by rail carriers), and 11706 (Liability of rail carriers under receipts and bills of lading). Generally, the Board would have jurisdiction over a Lease Agreement involving a line of railroad under 49 U.S.C. §§10901 or 10902, neither of which applies to Amtrak under 49 U.S.C. §24301(c). Additionally, under 49 U.S.C. §24301(j), laws that apply to joint use or operation facilities and equipment do not apply to a "person making an agreement with Amtrak to the extent necessary to allow the person to make and carry out obligations under the agreement."

The Board has stated that “except for certain provisions not relevant here, Amtrak is not subject to the Board’s jurisdiction. 49 U.S.C. 24301(c).” Regulations on Safety Integration Plans, 6 S.T.B. 129, 183 (2002). As noted above, the exceptions granting the Board limited jurisdiction over Amtrak do not apply to the Proposed Transaction.

Because the Board lack jurisdiction over Amtrak and persons entering agreements with Amtrak under 49 U.S.C. §24301(c) and (j), respectively, the Board lacks jurisdiction over the Lease Agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

EXPEDITED HANDLING REQUESTED

Petitioners request the Board to expedite the handling of this petition, so that any decision served by the Board will be effective no later than October 15, 2012, which will enable the parties to complete an orderly closing by November 5, 2012.

NYSDOT has sought funding for these projects from the Federal Railroad Administration, and plans to complete certain portions of the project in 2013. The Lease Agreement cannot be consummated until Petitioners are certain that Board will not exercise regulatory authority over the lease, such that the Board’s authority is not required for the Proposed Transaction to proceed, or that there is appropriate authority from the Board in place. The parties believe that if they can consummate the Lease Agreement by November 5, 2012, they will have sufficient time to plan for the 2013 construction season. Any delay in such consummation might delay some construction from 2013 to 2014.

The capital improvements would create construction jobs and allow Amtrak to better serve the public by increasing reliability on the Hudson Line. The Proposed Transaction must

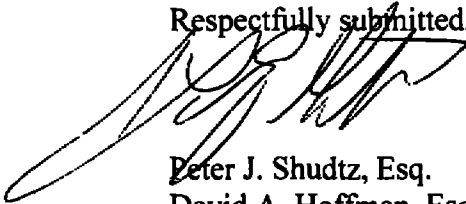
occur in order to implement the capital improvements funded by government grants, and Amtrak and CSXT must receive the Board's ruling on this declaratory order request in order to close the Proposed Transaction. In *MIDOT*, the Board acted expeditiously (within less than six weeks of the filing) in similar circumstances to find "that 49 U.S.C. § 10901 does not apply to this sale of the physical assets of a rail line to a state agency because the selling rail carrier will retain an exclusive, perpetual easement to fulfill its freight rail common carrier obligations on the rail line, and the purchaser cannot unduly interfere with the freight rail service." *MIDOT* at 1.

CSXT and Amtrak respectfully request expedited handling of this Petition.

CONCLUSION

Petitioners respectfully request the Board to issue a declaratory order that it does not have regulatory authority over the lease of CSXT's Hudson Line to Amtrak while CSXT retains the freight common carrier obligation over the Hudson Line. Petitioners also request that the Board expeditiously grant the requested relief and serve a decision that will be effective not later than October 15, 2012, so that the transaction can be completed by November 5, 2012.

Respectfully submitted,



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Attorneys for National Railroad
Passenger Corporation

Attorneys for: CSX Transportation, Inc.

Dated: September 11, 2012

EXHIBIT A – MAP

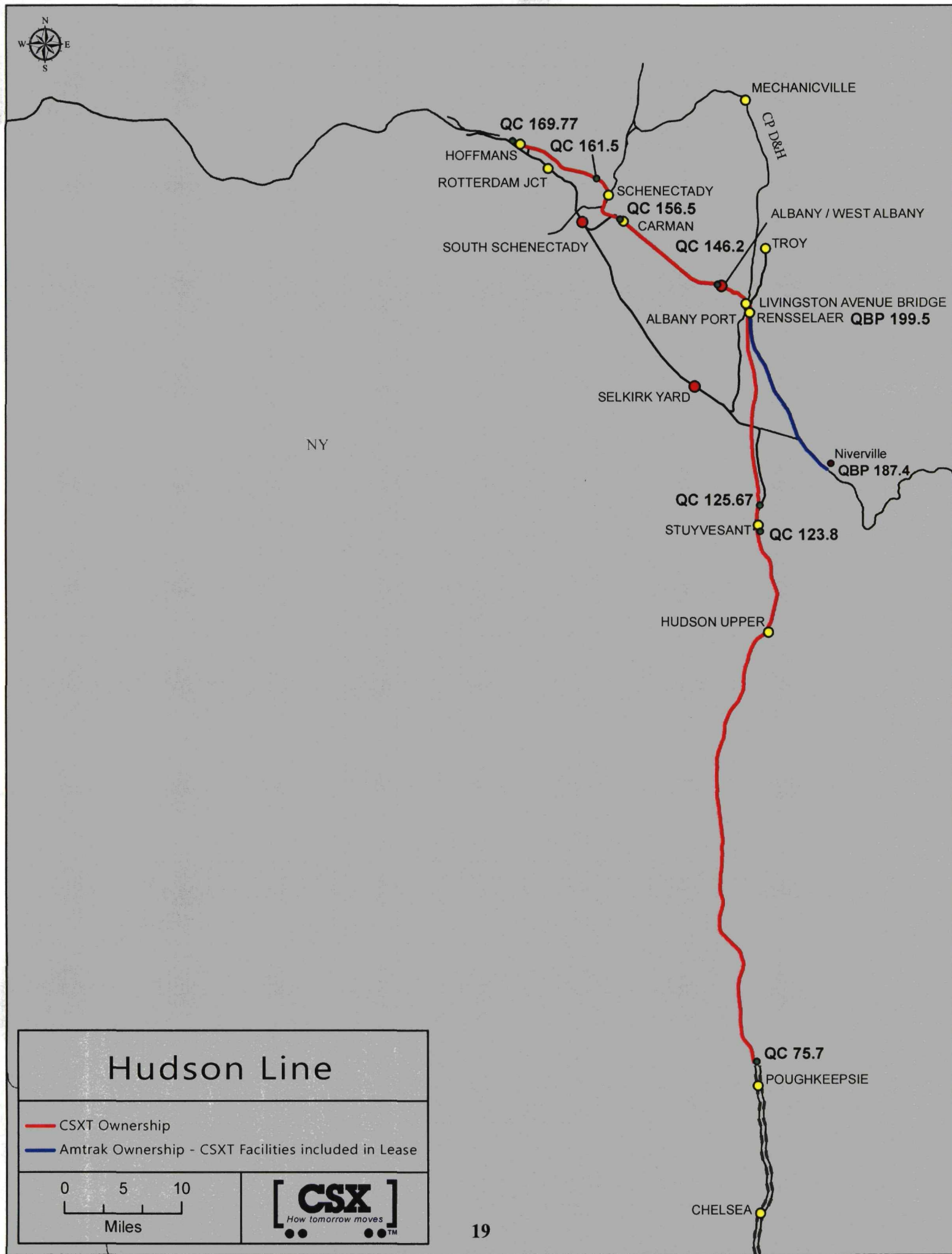


EXHIBIT B – LEASE AGREEMENT

Execution Copy

TRANSITION AGREEMENT
between
NATIONAL RAILROAD PASSENGER CORPORATION
and
CSX TRANSPORTATION, INC.

Pertaining to the Hudson Line

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TRANSITION AGREEMENT
between
NATIONAL RAILROAD PASSENGER CORPORATION
and
CSX TRANSPORTATION, INC.

THIS TRANSITION AGREEMENT (this "Transition Agreement") made as of the 23rd day of September, 2011 (the "Transition Effective Date") by and between NATIONAL RAILROAD PASSENGER CORPORATION, whose address is 60 Massachusetts Avenue, N.E., Washington, DC 20002 (hereinafter referred to as "Amtrak") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT"). Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A to the Hudson Line Operating, Management and Land and Track Lease Agreement between Amtrak and CSXT(hereinafter referred to as "O&M Agreement").

WITNESSETH:

WHEREAS, Amtrak and CSXT have established in the O&M Agreement the terms and conditions governing the conduct of Railroad Operations over the Hudson Line, and the terms and conditions under which CSXT shall lease the Hudson Line to and Amtrak shall lease the Hudson Line from CSXT; and

WHEREAS, the O&M Agreement provides for a Transition Period, during which Amtrak and CSXT shall (i) collaborate on an efficient and orderly transition of operations of the Hudson Line from CSXT to Amtrak, and (ii) endeavor to satisfy the conditions listed in Subsection (b) of Section 36 of the O&M Agreement; and

WHEREAS, CSXT and Amtrak desire to document their mutual understanding with respect to

certain rights, responsibilities and understandings of the parties during and after the Transition Period, which are not otherwise set forth in the O&M Agreement; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

Section 1. Communication and Decision Making.

The parties recognize and acknowledge the importance of effective communications and timely, well informed decision making for the orderly transition of the operation of the Hudson Line, and to this end, the parties agree to:

a. Designate appropriate teams including primary representatives from each party for purposes of coordinating activities between Amtrak and CSXT under this Transition Agreement. For purposes of this Transition Agreement, those representatives are as follows:

Amtrak

Edgar Courtemanch, Senior Director
60 Massachusetts Ave, NE
Washington, DC 20002
(202)-906-3249

CSXT

Cheryl Boehm, Director Passenger Services
500 Water Street - J315
Jacksonville, FL 32202
(904)-359-7490

b. Within thirty (30) days after the Transition Effective Date, jointly develop a master schedule necessary to achieve the timely satisfaction or waiver of the conditions set forth in Section 36 (b) of the O&M Agreement, and to review, verify, and/or modify said schedule no less than monthly to ensure that it remains current and accurate.

c. Schedule and hold regular meetings of appropriate personnel to monitor the efforts of the parties during the Transition Period; to discuss any issues that may arise; and, where the parties deem it

appropriate to do so, to memorialize progress and the decisions of the individual parties.

d. Provide timely exchange of information to each other as well as to the New York State Department of Transportation, to help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities. The parties shall cooperate with one another with respect to the exchange of information that each of the parties, in its discretion, considers necessary to fulfill the requirements of this Transition Agreement.

e. The parties acknowledge that disagreements, if any, arising under this Section concerning the designation of representatives, holding meetings and exchanging information are not subject to binding arbitration.

Section 2. Transition of Operations.

a. The parties agree to cooperate in coordinating the training of personnel, and training the trainer, in NORAC and Physical Characteristics training. All training shall be completed thirty (30) days prior to the Commencement Date and at the expense of the relevant employer.

b. CSXT hereby consents to, and Amtrak shall be allowed to undertake and perform, the limited construction activities and improvements listed in **Exhibit A** attached hereto, during the Transition Period, subject to the processes described in Section 5 of the O & M Agreement, coordination with CSXT engineering, the existing leases and collective bargaining agreements.

c. During the Transition Period, CSXT and Amtrak shall use their best efforts to mutually identify the records and information necessary for the operation of the Hudson Line, and mutually agree to the terms under which such records and information shall be transferred by CSXT to Amtrak. A list of records and information requested by Amtrak as of the date of this Transition Agreement is included in **Exhibit B**.

d. Within sixty (60) days of the Transition Effective Date, CSXT shall provide a

comprehensive inventory of signs in need of re-stencil.

e. Sixty (60) days prior to the Transition Effective Date, CSXT shall provide Amtrak a list of all CSXT employees certified to be qualified to operate over the Hudson Line.

f. Effective on the Commencement Date, Amtrak shall publish a general order, establish a bulletin order and a division notice procedure.

g. On the Commencement Date, the NORAC rules shall become effective.

h. Dispatch.

Amtrak will assume the obligation and responsibility to provide dispatching on the Hudson Line on the Commencement Date.

i. Maintenance

Subject to the condition described in Section 36(b)(xviii) of the O&M Agreement, Amtrak will assume the obligation and responsibility to provide maintenance on the Hudson Line on the Commencement Date.

j. Spare Parts

Commencing on the Transition Effective Date and continuing for a period of ninety (90) days after the Commencement Date, the purchasing departments of CSXT and Amtrak, respectively, will cooperate with one another to allow Amtrak reasonable access to spare parts available to CSXT through CSXT vendors at Amtrak expense until Amtrak is fully stocked with appropriate spare parts. Prior to accessing any such inventory, Amtrak shall establish a direct billing relationship with each CSXT vendor supplying such spare parts.

k. Supervisory Personnel

CSXT shall make available supervisory (non-represented) employees identified below at mutually agreeable times and in a manner that shall not interfere with the continued performance by such CSXT supervisory personnel of their normal CSXT work assignments, for consultation and

familiarization for a period of approximately three (3) months prior to the expected Commencement Date until three (3) months after the actual Commencement Date, which period shall be subject to extension by mutual agreement. The CSXT supervisory personnel to be made available are:

1. CSXT Roadmaster presently responsible for the majority of the Hudson Line trackage limits,
2. CSXT Signal Manager responsible for the majority of the signals and interlockings within the limits of the Hudson Line,
3. CSXT Bridges Manager responsible for managing the inspection and maintenance of the bridges and culvert structures within the Hudson Line. and
4. CSXT Communications Manager responsible for the majority of the radio installations and communications within the limits of the Hudson Line.

I. Non-interference

CSXT and Amtrak agree that during the Transition Period each shall make every reasonable effort to minimize interference with the operations and activities of the other.

Section 3. Canadian Pacific Railway (CPR).

During the Transition Period the parties will seek to engage in discussions with CPR with respect to the possible assignment of the D&H - CSXT New York Trackage Rights Agreement.

Section 4. Post Commencement Date Commitment.

Following the Commencement Date, Amtrak shall use its best efforts to do the following:

- a. Establish communication process and change out of highway-rail grade crossing signage within seven (7) days of the Commencement Date.
- b. Replace all padlocks (other than type 102 locks) on signal appliances, signal, switch,

communication, electrical, mechanical and other within seven (7) days of the Commencement Date.

c. Install "No Trespassing Signs" as appropriate within one (1) month of the Commencement Date. CSXT shall provide a comprehensive inventory of signs in need of replacement within sixty (60) days of execution of this Transition Agreement.

d. Re-stencil current CSXT Hudson Line signs to identify Amtrak as the responsible party to contact for information within one (1) month of the Commencement Date.

Section 5. Term.

The term of this Transition Agreement shall commence on the Transition Effective Date and terminate on the first to occur of the Commencement Date or October 31, 2013. provided, however, that the obligations under Section 2 (j), Section 2 (k) and Section 4 that extend beyond the Commencement Date shall remain in effect for the period of time stated in the respective section.

Section 6. Transition of Employees.

The transition of employees engaged in the performance of work on the Hudson Line from CSXT to Amtrak, if any, shall be consistent with each individual employee's consent, all applicable law and any applicable collective bargaining agreement.

Section 7. Miscellaneous.

a. This Transition Agreement is being entered into in conjunction with the O&M Agreement, and these two agreements shall be construed with reference to one another and neither agreement shall have precedence over the other except in the event of an irreconcilable conflict in which case, (i) the O & M Agreement shall govern, and (ii) nothing in this Agreement shall impose upon CSXT any responsibility for service outcomes on the Hudson Line or supersede any provision of the O&M Agreement acknowledging

that CSXT shall have no responsibility for service outcomes on the Hudson Line. This Transition Agreement may not be amended, modified, or supplemented except by an instrument or instruments in writing executed by both parties.

b. It is the intention of the parties hereto that the laws of the District of Columbia shall govern the validity of this Transition Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto.

c. Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or through the United States Postal Service, certified mail postage prepaid, or received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered to or received by the person to which it is addressed at the following addresses:

If to CSXT, to:

President
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz
CSX Corporation
Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station, 2955 Market Street

Philadelphia, PA 19104
Attention: Senior Director Host Railroads

with a copy to:

National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington DC 20002
Attention: General Counsel and Corporate Secretary

If to NYSDOT:

New York Department of Transportation
50 Wolf Road
Albany, NY 12232
Attention: Commissioner of Transportation

with a copy to:

New York Department of Transportation
50 Wolf Road
Albany, NY 12232
Attention: Director of Major Projects

Any notice party to this Transition Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other notice party to this Transition Agreement, in the same manner as provided above for all other notices.

d. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

e. This Transition Agreement may be executed in two or more counterparts, including counterparts transmitted by facsimile or electronic transmission, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Transition Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories each of which shall be deemed an original, but all of which together shall constitute but one

and the same instrument.

f. It is understood and agreed by the parties hereto that if any part, term or provision of this Transition Agreement is by the courts held to be illegal or in conflict with any law of the District of Columbia, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Transition Agreement did not contain the particular part, term, or provision held to be invalid.

g. The dispute resolution and arbitration process of Section 17 of the O&M Agreement is hereby incorporated into this Transition Agreement.

h. Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in the O&M Agreement.

[signature page follows]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and NATIONAL RAILROAD PASSENGER CORPORATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

ATTEST:

CaBook

CSX TRANSPORTATION, INC.

By:

Steven Potter

Its:

Assistant Vice President
Network Planning and
Joint Facilities

ATTEST:

Patricia J. Shaw

NATIONAL RAILROAD
PASSENGER CORPORATION

By:

Joseph H. Boardman

Its:

President and Chief Executive
Officer

APPROVED AS TO FORM:

By: James L. Boardman
Amtrak Law Department

CONSENTED TO:

ATTEST:

Mari Glavin

NEW YORK STATE DEPARTMENT
OF TRANSPORTATION

By:

Its:

John McDonald

[signature page to Transition Agreement]

EXHIBIT A

Hudson Line Agreed Construction Activities and Improvements On Site Work in 2012

Work to be performed by Contractor:

- 1) Staging Area Construction and Culvert Cleaning/Inspection (Work on site beginning as early as April 2012)
 - a. Construct - Two (2) staging areas
 - 1) Rensselaer Station Staging Area - Adjacent to the existing Amtrak employee parking lot
 - 2) CP 159 Staging Area - North Side of CP 159
 - b. Complete Culvert Cleaning and Inspection by the Project Design Team
 1. MP 142 - Rensselaer Station Closed Drainage System – Cleaning & Inspection
 2. MP 150.62 – Cleaning & Inspection
 3. MP 154.98 – Cleaning & Inspection
 4. MP 155.25 – Cleaning & Inspection
 5. MP 158.59 – Cleaning & Inspection
- 2) Headwall and other Culvert Repairs on Albany-Schenectady Double Track Project MP 141 to MP 161 (Work on site beginning as early as July 2012)
- 3) Wood Tie Replacement and Surfacing and Realignment Existing Mainline MP 143 to MP 161 (Work on site beginning as early as August 2012)

Work to be performed by Amtrak Forces:

- 1) Order and receive materials for proposed Turnouts for the Albany-Schenectady Double Track and Rensselaer 4th track projects
- 2) Construct #8 and #10 Wood Turnouts for the Rensselaer Train 4th Track Project in the Rensselaer Station Staging Area (Work on site beginning as early as July 2012)
- 3) Construct #10 Turnouts for the Albany-Schenectady Double Track Project for the GE lead at CP 159 and CP Rail Connection at CP 145
- 4) Retire existing turnout at MP 141.90 (Track 2 to former Freight By-Pass) (Work on site beginning as early as April 2012)
- 5) Retire existing cold storage turnout and spur at MP 143.16 (Work on site beginning as early as April 2012)
- 6) Retire existing Old Colonie turnout at MP 151.50 (Work on site beginning as early as April 2012)
- 7) Schenectady Station Platform and Track Reconfiguration MP160 (Work on site beginning as early as August 2012)

EXHIBIT B

CSXT Documents Requested by Amtrak - to be mutually agreed per Section 2.

Communications and Signals:

1. Road Diagrams and Layout charts (includes all location identification)
 - a. identify all Insulated joints, Signal control buildings
 - b. all signals and signal huts, at Grade crossings, movable bridges
 - c. hazard devices (Hot box, DED, Slide fence, high car)
 - d. track curve and grades showing station marks to calculate distances
2. Aspect charts (code and aspects for all routes and all interlockings).
3. Signal location equipment if not detailed on circuit plans (e.g.: switches, relays, microprocessors, signals, control mechanisms/panels, and recorders); includes manufacturers' installation and maintenance reference documentation and notices or bulletins for equipment being used.
4. Signal Power (list all signal power services, drops and power stations including equipment grounding, cutouts, and signal power pole line).
5. C&S Cutover and Periodic Test records (signed documentation of tests performed; most recent or 1 year).
6. Existing C&S Test Manual documenting all tests that are required with detailed instructions or procedures for performing each test.
7. Existing C&S maintenance manual indicating requirements and practices used to keep signal equipment in state of good repair, maintenance records on signal equipment including but not limited to batteries, signal aspects, switch machines, interlocking machines, and grade crossings.
8. Logs of signal system and/or equipment anomalies.
9. FRA Records: (last 5 years or most recent whichever is longer)
 - a. FRA Inspections including corrective action follow up documentation
 - b. False Proceed Reports
 - c. Crossing Activation Failure Reports
 - d. Grade crossing inventory database
 - e. Signal System Five Year Report
12. Fiber Line Information: Subject to the rights of Conrail and any applicable party to any applicable agreement, including confidentiality provisions, CSXT will provide fiber optic related documentation including as-built drawings as CSXT may possess with respect to fiber occupancies on the Hudson Line.

Bridge and Buildings Department:

1. Annual Bridge Inspections for the past five (5) years
2. Maintenance history for LAB Bridge and all special inspections done by outside consultants (ex. Underwater inspections, etc)
3. All Structures records for bridges, tunnels, culverts and buildings which includes:
 - a. Design plans
 - b. As-Built Construction plans for tunnels and bridges
 - c. Bridge ratings
 - d. Inspection and maintenance records
 - e. All correspondence relative to each
 - f. Special inspections done by outside consultants
4. All Overhead bridge agreements and overhead bridge correspondence

Track Department

Inspection Records for 5 years:

Daily Track Inspection
Monthly Switch Inspection

Special Inspections (heat, floods, storms, earthquakes etc)
Quarterly Moveable Bridge Inspections
Track Geometry Car Reports (CSXT or FRA)
FRA/NYS DOT Inspections

Rail: (5 years)

CWR Installation records
Service Failure Reports
Rail Detector Car Records (Sperry)

Inventory of Joints in CWR

Production: (by Track and Mile Post Location)

Out of face rail installations
Patch Rail Installations
Field Welds installed
Tie and surface work (tie counts)
Surfacing (out of face)
Spot Surfacing
Undercutting
Grinding (switch and Out of face)
Ballast cleaning
Ditching

Other:

Most up to date Track Charts
Listing of all facilities and structures that require transfer of utilities from CSXT to Amtrak

Personnel Records

In the event that Amtrak considers hiring a CSXT employee, CSXT will provide that employee's personnel records to Amtrak in accordance with each individual employee's consent, all applicable law and any applicable collective bargaining agreement.

**HUDSON LINE OPERATING, MANAGEMENT AND
LAND AND TRACK LEASE AGREEMENT**

**between
NATIONAL RAILROAD PASSENGER CORPORATION
and
CSX TRANSPORTATION, INC.**

Pertaining to the Hudson Line

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**HUDSON LINE OPERATING, MANAGEMENT
AND LAND AND TRACK LEASE AGREEMENT**

THIS HUDSON LINE OPERATING, MANAGEMENT AND LAND AND TRACK LEASE AGREEMENT ("O&M Agreement" or this "Agreement") made as of the 23rd day of September, 2011 (the "Execution Date") by and between NATIONAL RAILROAD PASSENGER CORPORATION ("Amtrak") and CSX TRANSPORTATION, INC. ("CSXT") (sometimes referred to herein collectively as the "parties"). Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A to this Agreement.

WITNESSETH:

WHEREAS, CSXT is the owner of, or has an interest in, the Hudson Line; and

WHEREAS, Amtrak currently operates intercity passenger rail services on the Hudson Line and shall continue to operate such intercity passenger rail services pursuant to this Agreement; and

WHEREAS, CSXT, Amtrak and NYSDOT are entering into a series of transactions including this Agreement to enable the making of certain improvements to the Hudson Line by Amtrak (collectively, the "Hudson Line Improvement Program"), to be funded by the Federal Railroad Administration ("FRA") and NYSDOT for the purpose of providing improved intercity passenger rail service over the Hudson Line, subject to CSXT's Reserved Rights to continue to provide common and contract carrier freight service over the Hudson Line, including the continued performance by CSXT and Canadian Pacific Railway Company ("CPR") under existing agreements between CSXT and CPR related to the Hudson Line, that allow

certain joint use, haulage and trackage rights, including all residual rights belonging to CPR (or its affiliate, Delaware and Hudson Railway Company, Inc.), as a result of the acquisition by CSXT and Norfolk Southern Railway Company of control of Conrail, (collectively, the “CPR Agreements”): and

WHEREAS, Amtrak desires to lease the Hudson Line from CSXT and CSXT desires to lease the Hudson Line to Amtrak, in accordance with the terms and conditions stated in this Agreement; and

WHEREAS, CSXT has retained, and has not transferred to Amtrak, the right to continue to provide contract and common carrier Rail Freight Service over the Hudson Line in accordance with the terms of this Agreement; and

WHEREAS, Amtrak and CSXT desire to establish in this Agreement the terms and conditions governing the conduct of Railroad Operations over the Hudson Line in a manner consistent with the other uses of the Hudson Line, it being the mutual intention of the parties hereto that Amtrak shall not obtain nor assume any common carrier freight obligation and that CSXT shall remain, and Amtrak shall not become, the freight rail carrier subject to the Interstate Commerce Act, the Railway Labor Act, or any other federal law as enacted or revised relating to the provision of Rail Freight Service on the Hudson Line.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

Section 1. Description Of Use/Property Covered/Right to Possession.

- (a) Subject to the terms and conditions hereinafter set forth, as of the Commencement

Date, the Hudson Line shall be used for the conduct of Rail Freight Service and Rail Passenger Service, such services being sometimes collectively referred to herein as “Railroad Operations.” CSXT shall have the exclusive right to use the Hudson Line for the provision of Rail Freight Service thereon, including the continued performance of the CPR Agreements by the parties thereto, and to operate CSXT’s trains, locomotives, rail cars and rail equipment thereon with its own crews. Amtrak shall have the exclusive right to use the Hudson Line for the provision of Rail Passenger Service and all other functions that Amtrak is legally permitted to perform, including the transportation of mail and express as provided by law, the selection of Positive Train Control System and operating Rail Passenger Service on the Hudson Line at speeds to be determined by Amtrak, provided however that changes in track conditions required for such speeds shall reflect Amtrak’s reasonable endeavors to accommodate Rail Freight Service and shall not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line (the “Permitted Uses”). Amtrak shall not provide common carrier or contract freight service nor grant trackage, haulage or other freight rights over the Hudson Line to any other carrier or third party without the written consent of CSXT, which consent may be withheld at CSXT’s sole discretion.

(b) Except as is otherwise expressly provided in Section 8 hereof, Amtrak shall manage, direct, dispatch and control the occupation, use and access to the Hudson Line in accordance with the provisions of Section 3 herein.

(c) It is understood by the parties hereto that, under its management, direction and control, and at its cost and expense, Amtrak shall furnish facilities, tracks, signals and bridges, for CSXT’s provision of Rail Freight Service on the Hudson Line that are substantially the same as and in at least substantially the same manner as provided by CSXT at the Commencement

Date.

(d) The parties agree (i) that Amtrak shall serve as the host railroad for purposes of the NYSDOT/Amtrak Service Outcomes Agreement for so long as this Agreement and the related agreements described in Section 36(b)(ix) are in effect, and (ii) that Amtrak shall serve as the host railroad for purposes of future Service Outcomes Agreements for so long as this Agreement and the related agreements described in Section 36(b)(ix) are in effect. The parties understand that CSXT has no responsibility for service outcomes during or after termination of this Agreement.

(e) CSXT hereby leases the Hudson Line to Amtrak effective on the Commencement Date, in its "AS IS, WHERE IS" CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Amtrak acknowledges that it has inspected the Hudson Line and accepts it in its current condition and Amtrak deems it appropriate for the Permitted Uses. Amtrak leases the Hudson Line subject to all existing agreements, encroachments, easements, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Agreement provides actual notice thereof.

(f) On the Commencement Date, CSXT will deliver to Amtrak possession of the Hudson Line for the Permitted Uses, provided, however, that pursuant to the Transition Agreement attached hereto as Exhibit H, CSXT will have three (3) months after said Commencement Date in which to remove, at its expense, and without any cost or expense to Amtrak, nor any material restriction or preclusion to Amtrak's operations, and in coordination with Amtrak personnel who shall have a right to be present during such process, all personal

property of CSXT located on, but not affixed to, the Hudson Line as of the Commencement Date, which personal property is described on Exhibit B. Any such property which CSXT fails to remove during such period shall be treated as additional assets pursuant to Section 14 and listed on Exhibit C attached hereto.

Section 2. Compensation/Rent/Credits to Rent/Rent Payments.

(a) Beginning on the Commencement Date, and thereafter for the Term and subject to this Agreement, CSXT shall pay Amtrak a usage fee (the "Usage Fee") which shall have two components: a fixed fee component (the "Fixed Fee") and a variable fee component (the "Variable Fee") as follows:

(i) CSXT shall pay Amtrak a Fixed Fee of One Million Five Hundred Thousand dollars (\$1,500,000.00) for each twelve (12) month period beginning on the Commencement Date and continuing for each twelve (12) month period during the Term of this Agreement (pro-rata for any less than twelve (12) month period ending in the termination or expiration of this Agreement).

(ii) In addition to the Fixed Fee, CSXT shall pay Amtrak, on a quarterly basis a Variable Fee of Thirty-five cents (\$0.35), per car mile for each locomotive and each rail car, loaded or empty, (including each EOT Unit, business car, passenger car, ballast car, and rail car used in a work train, but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels) handled on the Hudson Line by or in the account of CSXT (or CPR if applicable), plus an annual differential charge of One Hundred Fifty Thousand dollars (\$150,000.00) for up to 5,000 cars in excess of 263,000 pounds. The number of cars in excess of 263,000 pounds will be determined every three (3) years for the immediately preceding three (3)

year period using waybill data (to be provided by CSXT) and CSXT will, with its next annual payment of \$150,000 either increase or decrease that payment by thirty cents (\$0.30) for every car in excess of or less than 15,000 cars during that three (3) period. Upon the expiration or termination of this Agreement, a pro-rata calculation for any period not previously subject to the foregoing reconciliation will be made and any balance in favor of either party will be paid by the appropriate party to the other party within thirty (30) days of such expiration or termination.

The movement of any equipment in excess of the published weight limitation for the Hudson Line shall not be permitted without the prior written consent of Amtrak. Each locomotive unit, EOT Unit, business car, passenger car, ballast car, and work train car (but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels), handled by CSXT on the Hudson Line, for the purpose of this Agreement, shall be counted as one car. If the D&H - CSXT New York Trackage Rights Agreement, to the extent related to operation over the Hudson Line, has not been fully or partially assigned to Amtrak, and CPR has reinstituted operations pursuant to that agreement over the Hudson Line, then trains so operated by CPR (each a "CPR Train"), shall be deemed to be CSXT trains for purposes of this Section 2. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the Uniform Machine Language Equipment Register ("UMLER") Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" shall be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. Car count data for articulated units is subject to change upon development of technology acceptable to both parties that would accurately separate units by Car Numbers.

(b) With respect to the Variable Fee, CSXT shall furnish to Amtrak, within thirty (30) days of the end of each calendar quarter: (1) a statement of the number of loaded and empty rail cars as defined in Section 2(a), above, handled by or in the account of CSXT or CPR (if applicable) over the Hudson Line and the miles traveled by each such car over the Hudson Line during the quarter ("Quarterly Statement"), and (2) a corresponding payment, calculated based upon the aforesaid Variable Fee and the car miles reported in the current Quarterly Statement.

(c) The two components of the Usage Fee shall be revised upward or downward each year, effective upon each anniversary of the Commencement Date, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Usage Fee shall be revised by calculating the percent of increase or decrease in the published index of the latest calendar year as related to the index for the previous calendar year and applying that percent to the Usage Fee. For the initial annual adjustment following the Commencement Date, the "latest calendar year" shall mean the calendar year following the Commencement Date and the "previous calendar year" shall mean the calendar year in which the Commencement Date occurs.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2011; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2012; "C" to be a component of the Usage Fee; and "D" to be the percent of increase or decrease; the revised component of the Usage Fee stated herein would be revised by the following formula:

$$(1) \quad (B - A)/A = D$$

$$(2) \quad (D \times C) + C = \text{revised component of the Usage Fee, effective upon the anniversary of the Commencement Date of the year being revised.}$$

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

(d) Annual Rent.

(i) The annual rent shall be Seven Million Dollars (\$7,000,000.00) (the "Rent").

(ii) The Rent shall be adjusted every five (5) years by the five year cumulative percentage of increase or decrease as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items" - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor ("CPI"). The CPI shall be applied to the Rent in effect on the respective anniversary of the Commencement Date as follows: $(1 + (CPI) \times \text{Rent})$. The adjusted figure shall be the Rent for the subsequent five (5) year period. In the event the CPI is discontinued, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties.

(iii) Payment of the annual Rent shall be suspended until each five (5) year anniversary of the Commencement Date and payable on such anniversary pursuant to the following rolling payment provisions and to the credits for improvement (each a "Capital Improvement"), made to the Hudson Line or to CSXT Property in the State of New York as described below:

1. Capital Improvements shall include (A) those improvements as may be mutually agreed by the parties and described on Schedule A to this Agreement and (B) any other improvements, additions and betterments, retirements, alterations, demolition, capital renewal and replacements to the Hudson Line, or to CSXT Property in the State of New York, including but not limited to those improvements described in the Hudson Line Improvement Program, to rail infrastructure, track, signals and communication, including the installation of Positive Train Control Systems, and the replacement of or any capital improvements to the bridge structure at Livingston Avenue or other bridges and structures.

2. Amtrak shall not be obligated to fund Capital Improvements, but to the extent such Capital Improvements are funded by Amtrak, NYSDOT and/or other governmental entities, Amtrak shall make or cause to be made such Capital Improvements on the Hudson Line. Capital Improvements made or caused to be made by Amtrak on the Hudson Line shall be subject to the process described in Section 5 of this Agreement related to Amtrak Improvements. Each Capital Improvement made or caused to be made by Amtrak on the Hudson Line shall be deemed a tenant improvement and assigned a value based on the following percentages, unless a different value is set forth on Schedule A, which value shall be a credit towards Rent:

(A) for the common benefit of Rail Passenger Service and Rail Freight Service:

For the first six (6) years of the Term: forty-five percent (45%)

For the remainder of the Term: thirty-five percent (35%);

(B) for the benefit of Rail Freight Service only: one hundred percent (100%);

(C) for the benefit of Rail Passenger Service only: zero percent (0%).

3. Amtrak shall not be obligated to fund, make or cause to be made Capital

Improvements beyond the Hudson Line, but to the extent such Capital Improvements are funded by Amtrak, NYSDOT and/or other governmental entities and made to CSXT Property west of Hoffmans, New York, or elsewhere in the State of New York, such Capital Improvements shall be deemed a capital contribution and assigned a value based on the following percentages, unless a different value is set forth on Schedule A, which value shall be a credit towards Rent:

(A) for the common benefit of Rail Passenger Service and Rail Freight Service:

For the first six (6) years of the Term: eighty-five percent (85%)

For the remainder of the Term: eighty percent (80%);

(B) for the benefit of Rail Freight Service only: one hundred percent (100%);

(C) for the benefit of Rail Passenger Service only: zero percent (0%).

4. Every five (5) years, beginning on the fifth anniversary of the Commencement Date, the parties shall determine the cumulative Rent owed to CSXT for the immediately preceding five (5) year period and the cumulative value of credits earned as a result of Capital Improvements during the same period (the "Rent Credit"). In the event that the Rent Credit generated from Capital Improvements in any five (5) year period is greater or lesser than the Rent in the same period (a "Rollover Event"), the difference in favor of either party (a "Rollover Amount"), shall not be payable by one party to the other, but shall be rolled over in favor of the appropriate party for purposes of the next five (5) year period. Additionally, if a Rollover Amount in favor of CSXT exceeds two (2) year's Rent (such excess, the "Gap") and the Gap is not eliminated within eighteen (18) months of the respective five (5) year anniversary in one of the following ways:

(A) funds equal to or greater than the Gap have been committed for expenditure

on Capital Improvements by the State of New York or the Federal Government, or

(B) cash or its equivalent, including an interest in real property acceptable to CSXT, equal to or greater than the Gap, has been paid or granted, respectively, to CSXT,

then CSXT shall have the right to terminate this Agreement by providing twelve (12) months prior written notice to Amtrak and NYSDOT, such termination to become effective twelve (12) months following receipt of such notice subject to the provisions of Section 43(d)(i) and (ii). Upon any expiration or termination of this Agreement, any Rollover Amount in favor of either party shall be ignored financially by the parties and neither party shall be obligated to pay any Rollover Amount to the other.

Section 3. Operation and Management.

(a) Subject to the terms and conditions of this Agreement. from and after the Commencement Date, Amtrak shall manage, direct, dispatch and control all Railroad Operations on the Hudson Line and Amtrak shall control the entry and exit of all trains, locomotives, rail cars and rail equipment and the movement and speed of same to, from and over the Hudson Line. Except as is otherwise expressly provided herein, all rules, special instructions, timetables, practices, regulations, and orders governing operations on the Hudson Line shall be promulgated and issued by Amtrak and may be modified and amended by Amtrak from time to time during the Term of this Agreement; provided, however, that in so promulgating, issuing, modifying or amending any such matters Amtrak shall reasonably endeavor to accommodate Rail Freight Service and shall not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line. CSXT and Amtrak shall each designate a single representative for purposes of coordinating activities between Amtrak and CSXT under this

Agreement.

(b) Amtrak shall furnish, at its cost and expense, any and all supervisory personnel, operators, dispatchers and bridge tenders as may be necessary for the conduct of Railroad Operations by CSXT and Amtrak on the Hudson Line.

(c) Amtrak shall provide, at its cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Rail Passenger Service on the Hudson Line and CSXT shall provide, at its cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Rail Freight Service on the Hudson Line. CSXT shall equip, at its cost and expense, its trains, locomotives, rail cars and rail equipment with radios and such other communication and signal devices, including equipment required for a Positive Train Control System, that comply with the reasonable requirements established by Amtrak from time to time during the Term of this Agreement for the conduct of Railroad Operations on the Hudson Line. CSXT and Amtrak shall comply with any and all provisions of applicable laws, regulations and rules, promulgated by any municipality, state or federal board, commission or agency having appropriate jurisdiction, to the extent such laws, rules, or regulations apply to Amtrak, CSXT or the Hudson Line, respecting the operation and use of the Hudson Line and the operation, condition, inspection and safety of their respective trains, locomotives, rail cars and rail equipment while such trains, locomotives, rail cars and rail equipment are being operated on the Hudson Line. Other than with respect to environmental matters, which shall be governed by the terms of Section 21 of the Agreement, in the event that any fine, penalty or liability is imposed upon a party hereto or its officers, agents and employees under any such laws, rules and regulations by any such public authority or court having jurisdiction in the premises which is attributable to the failure of such party to comply with its obligations hereunder, then that party

shall pay any and all such fines, penalties and/or liabilities so imposed. In the event a fine, penalty or liability is imposed upon one party which is attributable to the failure of the other party to comply with its obligations hereunder, then the party whose failure to comply with such obligations shall pay any and all such fines, penalties and/or liabilities so imposed on the other party. Notwithstanding the foregoing provisions, the party upon whom a fine, penalty or liability is being proposed to be imposed shall communicate with the other party and if there is no disagreement between the parties concerning which party's failure is responsible for such fine, penalty or liability, that party shall have the right to contest or settle any such fine, penalty or liability. If the parties do not agree which party's failure is responsible for such fine, penalty or liability, either party may, to the extent permitted by law, contest such fine, penalty or liability, and, provided the party upon whom the fine, penalty or liability is imposed has given notice to and offered to allow the other party to participate in the contest or negotiation of the fine, penalty or liability, may settle such fine, penalty or liability without prejudice to its right to seek reimbursement from the other party under and subject to this Agreement pursuant to Section 17. Nothing in this Section 3(c) shall alter, modify or amend Section 19 of this Agreement. CSXT shall ensure that all freight service providers on the Hudson Line equip their locomotives with a Positive Train Control System.

(d) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the Hudson Line, and Amtrak shall provide employees, at its cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the Hudson Line. All of CSXT's and Amtrak's employees who shall operate trains, locomotives, rail cars and rail equipment over the Hudson Line shall be qualified in the following manner:

- i. Physical characteristics qualifications/testing will be administered by Amtrak.
- ii. Initial operations instruction and testing for CSXT employees would be performed by Amtrak Operating Practices personnel.
- iii. Annual or other periodic requalification of CSXT employees will be performed by CSXT personnel.

CSXT shall pay to Amtrak, within thirty (30) days of receipt of bills therefor, any cost incurred by Amtrak in connection with the qualification of such employees of CSXT as well as the cost incurred by Amtrak for furnishing pilots, until such time as such employees are deemed by the appropriate examining officer of Amtrak to be properly qualified for operation as herein contemplated. As used herein, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the Hudson Line in accordance with Amtrak's operating rules and practices. For purposes of this Subsection 3(d), to the extent permitted by Amtrak and FRA rules, any employee of CSXT qualified to operate over the Hudson Line on a date prior to the Commencement Date shall be deemed qualified by Amtrak for operation over the Hudson Line as herein contemplated as of the Commencement Date and shall remain so until the expiration of their CSXT qualifications, at which time they must re-qualify. On a date prior to the Commencement Date, CSXT shall provide to Amtrak a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the Hudson Line.

(e) If an employee of CSXT, working on Hudson Line is alleged to have violated Amtrak's safety rules, operating rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under applicable CSXT labor agreement rules, CSXT, shall, unless Amtrak has actual notice of such alleged violation, provide notice of such alleged violation to Amtrak and, when appropriate, shall conduct an investigation. An officer of

Amtrak may be present during such investigation. After the investigation is concluded, CSXT shall promptly furnish Amtrak with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT shall arrange to assess discipline within the applicable time limits. If Amtrak recommends dismissal, CSXT reserves the right to bar the employee from the Hudson Line and other Amtrak-owned or controlled rail lines in lieu of dismissal.

(f) (1) If such employee is barred by CSXT from the Hudson Line, CSXT shall be responsible for any and all claims and expenses because of such action, except as provided in subparagraph (f)(3), below.

(2) In a major offense, such as a violation of Rule "G," dishonesty, insubordination, or a serious violation of operating rules, wherein Amtrak desires to bar such employee from the Hudson Line pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee, and CSXT shall bar the employee from the Hudson Line and other Amtrak-owned or controlled rail lines.

(3) Amtrak shall reimburse CSXT for all payments CSXT is required to make as a result of a successful challenge (hereinafter "Claim") being made by the employee or his representative as to the discipline when, at the written request or direction of Amtrak, as the case may be, such employee has been barred from the Hudson Line or other Amtrak owned or controlled rail line prior to an investigation. CSXT agrees to notify Amtrak before making any required payment on any such Claim. In the event such Claim is progressed to an Adjustment Board, Amtrak shall be given an opportunity to review CSXT's submission. Any payments required to be made to employees, as a result of an investigation being "overturned," shall include not only actual wages, but in addition, shall include expenses which CSXT may be

required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits, and the employee shall be permitted to return to the Hudson Line. It is understood that liability to Amtrak shall only occur where the finding is based on the employee's actual responsibility for the incident giving rise to the disciplinary investigation and shall not include decisions overturned based on procedural defects in CSXT's handling of the matter.

(g) Each party shall be solely responsible for any protective conditions or benefits imposed by any judicial, regulatory or governmental body for the benefit of that party's employees or the employees of any subsidiary or affiliate of that party or are otherwise required to be paid to such employee under that party's collective bargaining or other arrangement, howsoever arising, including as a consequence of the approval of this O&M Agreement, the exercise or performance of CSXT or Amtrak of any rights or obligation hereunder, the termination of the Agreement, or any abandonment or discontinuance of operations on the Hudson Line.

(h) If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive, rail car or rail equipment of Amtrak or CSXT becomes unable to proceed under its own power, or fails to maintain the speed required by Amtrak on the Hudson Line, or, if in emergencies, crippled or otherwise defective rail cars or locomotives are set out of Amtrak's or CSXT's trains, then Amtrak may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move such trains, locomotives, rail cars or rail equipment; provided, however, that in the event that Amtrak is unable to assist, CSXT shall, at its own cost and expense, promptly make such repairs or furnish such motive

power as may be necessary to expeditiously haul, help, push or move CSXT trains, locomotives, rail cars or rail equipment off of the Hudson Line and may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move Amtrak trains, locomotives, rail cars or equipment. CSXT shall bear and pay to Amtrak the cost and expense incurred by Amtrak of rendering any such assistance for CSXT and Amtrak shall bear the cost and expense incurred by CSXT of rendering any such assistance for Amtrak. Except as provided in Section 19, the party bearing the cost and expense as aforesaid, shall be responsible for any and all liability, cost and expense arising out of or connected therewith. Any assistance provided by Amtrak to CSXT under this provision shall not be considered providing common carrier freight service by Amtrak.

(i) Amtrak shall develop a Service Plan in consultation with CSXT for Rail Passenger Service and Rail Freight Service on the Hudson Line that will reflect any Amtrak Operational Change and CSXT Operational Change and the need for Rail Freight Service to be temporally separated from the majority of commuter train operations between Poughkeepsie, NY and Spuyten Duyvil, NY. The Service Plan will initially document Rail Passenger Service and Rail Freight Service in existence as of the Execution Date.

(A) Amtrak may make an Amtrak Operational Change to Rail Passenger Service and shall advise CSXT of such Amtrak Operational Change, but shall not require CSXT's consent for such Amtrak Operational Change, subject to the requirements of this Agreement.

(B) CSXT may propose a CSXT Operational Change to Rail Freight Service to Amtrak and Amtrak shall review and consider such CSXT Operational Change, subject to the requirements of this Agreement. If after CSXT has requested a CSXT Operational

Change from Amtrak, Amtrak shall determine that improvements to the Hudson Line, including changes in communication or signal facilities, are required to accommodate CSXT's Rail Freight Service beyond what is required by Amtrak to accommodate its Rail Passenger Service and other existing and future rail operations on the Hudson Line. Amtrak shall advise CSXT of the nature, scope and cost of such required improvements. Upon mutual agreement of the Parties regarding the improvements, and upon CSXT notifying Amtrak within one year of the date of such mutual agreement of CSXT's desire to implement such improvements, the provisions of Section 5(c) of this Agreement shall apply and the CSXT Operational Change shall be permitted. Should CSXT not so notify Amtrak within one year of such mutual agreement of the parties, the mutual agreement shall become void. CSXT may re-propose the changes and the process in this Subsection shall be repeated. If Amtrak determines that no such improvements as described in this Subsection (i) are required to effectuate the CSXT Operational Change, then the CSXT Operational Change shall be permitted.

(j) Amtrak and CSXT understand that Railroad Operations on the Hudson Line may be interrupted or delayed from time to time during the Term of this Agreement due to maintenance of or improvements to the Hudson Line, or Force Majeure as defined in Section 22 of this Agreement, however, Amtrak will schedule such maintenance or improvement work efficiently to minimize potential disruptions to Rail Passenger Service on the Hudson Line and Rail Freight Service. Except as expressly provided in this Subsection, neither party shall have any liability to the other for any loss or damage arising out of or resulting from any such interruption or delay. Except as expressly provided in this Subsection, CSXT shall be responsible for any and all liability, cost and expense arising out of or connected with any such

interruption or delay to Rail Freight Service and Amtrak shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Rail Passenger Service on the Hudson Line.

(k) From time to time during the Term of this Agreement following the Commencement Date, CSXT shall have the right subject to the provisions of Subsection 3(i) hereof to operate non-revenue special and/or excursion trains on or over the Hudson Line carrying CSXT's employees, invitees and/or passengers; provided, however, that CSXT shall notify Amtrak at least two weeks in advance and provide a schedule for such trains. CSXT shall not make such special or excursion trains available to members of the general public, and Amtrak shall have the right to inspect any equipment to be operated in such trains in advance of its operation on the Hudson Line. CSXT shall be entitled to or responsible for, as the case may be, any and all fees, rents or charges arising out of or connected with such special and/or excursion trains, and such trains shall be considered as trains of CSXT for all purposes under this Agreement, including, without limitation, the provisions of Subsections 2(a) and 19(d) hereof: and for purposes of Section 19 of this Agreement, the aforesaid employees, invitees and/or passengers of CSXT shall be considered as CSXT's employees. From time to time during the Term of this Agreement following the Commencement Date, Amtrak shall have the exclusive right to operate its, NYSDOT's, or another third party's rail passenger trains on the Hudson Line carrying employees, invitees and/or passengers including members of the general public, provided, however, the foregoing shall not be considered as consent to commuter operations or as a modification of Section 8(a) of this Agreement. Except in emergencies, third party detours over the Hudson Line shall be by consent of Amtrak. Amtrak shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected

with such detour trains, and such trains shall be considered as trains of Amtrak for all purposes under this Agreement.

(l) If the D&H - CSXT New York Trackage Rights Agreement, to the extent related to operations over the Hudson Line, has not been assigned or partially assigned to Amtrak, and CPR has reinstituted operations pursuant to that agreement over the Hudson Line, the parties agree that Amtrak and CPR will need to reach agreement on qualifications of employees, employee rules violations, the barring of employees and other relevant sections of this Agreement as it relates to CPR's operations on the Hudson Line.

Section 4. Maintenance of Hudson Line and CSXT Property.

(a) During the Term of this Agreement, Amtrak shall, at its cost and expense, maintain, repair, replace or renew the Hudson Line in accordance with applicable FRA Track Safety Standards and Amtrak standards; provided, however, that in doing so Amtrak shall reasonably endeavor to accommodate Rail Freight Service and shall not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line. Upon request, Amtrak shall update CSXT as its standards may change from time to time.

(b) CSXT shall have management, direction and control of all work of maintaining and repairing the CSXT Property at CSXT's cost and expense, in a condition deemed appropriate by CSXT in its sole judgment and discretion. CSXT shall be responsible for the maintenance of Sidetracks at CSXT's cost and expense. CSXT shall reimburse Amtrak on a monthly basis for the actual cost plus standard Amtrak overheads for installing, repairing, maintaining and removing any tracks, switches and turnouts located on the Hudson Line that exist solely for freight service, when such work is performed or caused to be performed by Amtrak, provided,

however, that such work will be performed after notice and consultation with CSXT with respect to the timing of such work, the cost, the option of acquisition by CSXT of the materials necessary for such work and such other planning process the parties deem advisable. CSXT facilities, including Sidetracks, shall be maintained and repaired by CSXT in accordance with the applicable FRA Track Safety Standards and the Sidetrack Agreement pertaining thereto, provided, however, that any in-service CSXT maintained track, including Sidetracks, the center line of which is within twenty-five (25) feet of the center line of any Hudson Line main tracks shall be maintained by CSXT at CSXT's cost and expense at no less than FRA Class II. In the event that Amtrak agrees to maintain or repair third party Sidetracks at CSXT's request, CSXT shall reimburse Amtrak on a monthly basis for the actual cost plus standard Amtrak overheads for such work. Any work performed by Amtrak pursuant to this Section 4 (b) shall be performed in accordance applicable and Amtrak standards.

(c) From time to time CSXT and Amtrak may conduct such inspection of the Hudson Line as they deem appropriate to determine the other party's compliance with its obligations under this Agreement; provided, however, CSXT shall endeavor in good faith to schedule its inspections in a way that will enable it, upon prior written notice to Amtrak, to accompany the other party on its inspection of the Hudson Line.

(d) Amtrak shall have management, direction, and control of and shall perform, or cause to be performed, at its cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment. CSXT shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment.

(e) As provided in Section 13 of this Agreement, upon the Commencement Date as specified therein, CSXT shall assign to Amtrak and Amtrak shall assume all of the agreements listed or described in Exhibit D therein and all rights and obligations under such agreements pertaining to the maintenance, repair, and operation of existing Hudson Line roadway and highway crossings, crossing protection devices and railway interlocking and interchange facilities and thereafter Amtrak may renegotiate, renew, terminate, cancel, or modify any such agreements subject to the terms and conditions of Section 8 hereof. It is understood by the parties hereto that Amtrak shall have the right to grant new crossings on the Hudson Line subject to the terms and conditions of Section 8 hereof.

(f) Nothing contained in this Section 4 shall be construed to modify, amend, limit or restrict the provisions of Section 19 hereof.

5. Additions, Betterments, Retirements and Alterations.

(a) During the Term of this Agreement, subject to the procedures set forth below, Amtrak may make such improvements, additions and betterments, retirements, alterations or demolition to the Hudson Line, including those improvements described in the Hudson Line Improvement Program, it deems necessary for the Permitted Uses, including the placement of permanent structures, the installation of Positive Train Control Systems, and the granting of permanent access to or occupancy of the Hudson Line (collectively, "Amtrak Improvements"), provided that in doing so Amtrak shall reasonably endeavor to accommodate Rail Freight Service and shall not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line. As part of the plan review process for Amtrak Improvements described herein, CSXT may require the removal of an Amtrak Improvement, at

Amtrak's cost, if the Amtrak Improvement will no longer be capable of being utilized for Rail Passenger Service or Rail Freight Service at the end of the Term or at any time during the Term if the Amtrak Improvement has not been utilized for a continuous period of thirty-six (36) months. The retirement of any asset existing on the Hudson Line prior to the Commencement Date shall be subject to CSXT consent, which consent shall not be unreasonably withheld, conditioned or delayed, and CSXT shall be entitled to full monetary compensation for any such assets it authorizes to be retired and/or sold by Amtrak (minus reasonable transaction costs), except for retirements associated with maintenance, repair, replacement, renewal, rehabilitation, upgrading or improvements where such assets are replaced by Amtrak with assets that are deemed equivalent in the reasonable judgment of CSXT. Amtrak, CSXT and NYSDOT agree that all Amtrak Improvements, including those purchased and/or installed at NYSDOT and/or FRA expense shall become a part of the Hudson Line and such retirements shall be excluded from the Hudson Line. Title to improvements funded by NYSDOT pursuant to this Agreement, excluding the underlying land, shall be the property of NYSDOT and title thereto shall be vested in NYSDOT at the time of acquisition and shall remain vested in NYSDOT for the useful life of such improvements and then vest in CSXT. CSXT, Amtrak and NYSDOT agree that for purposes of this Agreement, twenty (20) years from the date the improvement is completed and placed into service shall be considered the "useful life" of the improvement.

(b) Whenever Amtrak wishes to make Amtrak Improvements (other than Hudson Line Improvement Program projects for which CSXT has provided prior written approval), the following procedures shall apply, other than for de minimis Amtrak Improvements:

(i) Amtrak shall submit to CSXT a copy of the plans and specifications for the Amtrak Improvements for CSXT's review. The plans and specifications submitted shall

contain sufficient detail to allow meaningful review.

(ii) CSXT shall have thirty (30) days from receipt of such written submittal in which to request additional information or to seek clarification. If CSXT requests such additional information or seeks clarification of the decision, Amtrak shall within fifteen (15) days either: (A) supply the additional information or clarification, or (B) notify CSXT that no additional information or clarification is necessary and will not be provided.

(iii) Within ninety (90) days from receipt of the submission of the plans to CSXT pursuant to subparagraph (i), above or within forty-five (45) days of receipt by CSXT of the additional information or clarification provided by Amtrak pursuant to subparagraph (ii)(A), above, or within forty-five (45) days of receipt by CSXT of notification from Amtrak that no additional information or clarification will be provided pursuant to subparagraph (ii)(B), above, whichever time frame is later, CSXT shall transmit its written comments to Amtrak.

(iv) If CSXT fails to respond within the ninety (90) days, Amtrak may proceed under subparagraph (viii) below.

(v) If CSXT accepts Amtrak's proposed plans, the proposed plan shall become final.

(vi) If CSXT objects to Amtrak's proposed plans, it shall set forth with particularity the reasons such plans do not reflect Amtrak's reasonable endeavors to accommodate Rail Freight Service or will materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line. and shall identify reasonable alternatives or conditions that would render the proposed plans acceptable.

(vii) If Amtrak accepts and incorporates CSXT's tendered alternatives or conditions, the proposed plans as so modified shall become final.

(viii) If Amtrak and CSXT are unable to reach agreement with respect to CSXT's tendered alternatives or conditions, either party may seek remedy by dispute resolution and arbitration in accordance with the provisions of Section 17 hereof.

(c) During the Term of this Agreement, subject to the procedures set forth below, CSXT shall have the right to cause Amtrak to make such improvements, additions and or betterments, retirements, alterations or demolition to, the Hudson Line it deems necessary for Rail Freight Service on the Hudson Line, including but not limited to relocating railroad tracks, constructing, erecting or installing facilities, utility systems, commercial poster panels and towers, and taking or extracting minerals (collectively, "CSXT Improvements") or subject to mutually satisfactory arrangements, to cause a third party to make CSXT Improvements, provided that; a) CSXT shall pay for the CSXT Improvements at its sole expense; b) the CSXT Improvements shall not unreasonably interfere with Rail Passenger Service; c) Amtrak shall not be required thereby to acquire additional real estate; d) the CSXT Improvements shall be made as promptly as feasible; and e) any increase in costs incurred by Amtrak which is occasioned by the CSXT Improvements shall be paid by CSXT.

(d) Except for improvements mutually agreed to by the parties under the terms of the Service Plan referenced in Section 3(i) of this Agreement, or de minimis CSXT Improvements, whenever CSXT wishes to have CSXT Improvements made, the following procedures shall apply:

(i) CSXT shall submit to Amtrak a copy of the plans and specifications for the CSXT Improvements for Amtrak's review. The plans and specifications submitted shall contain sufficient detail to allow meaningful review.

(ii) Amtrak shall have thirty (30) days from receipt of such written submittal

in which to request additional information or to seek clarification. If Amtrak requests such additional information or seeks clarification of the decision, CSXT shall within fifteen (15) days either: (A) supply the additional information or clarification, or (B) notify Amtrak that no additional information or clarification is necessary and will not be provided.

(iii) Within ninety (90) days from receipt of the submission of the plans to Amtrak pursuant to subparagraph (i), above or within forty-five (45) days of receipt by Amtrak of the additional information or clarification provided by CSXT pursuant to subparagraph (ii)(A), above, or within forty-five (45) days of receipt by Amtrak of notification from CSXT that no additional information or clarification will be provided pursuant to subparagraph (ii)(B), above, whichever time frame is later, Amtrak shall transmit its written comments to CSXT.

(iv) If Amtrak fails to respond within the ninety (90) days, CSXT may proceed under subparagraph (viii) below.

(v) If Amtrak accepts CSXT's proposed plans, the proposed plan shall become final.

(vi) If Amtrak objects to CSXT's proposed plans, it shall set forth with particularity the reasons such plans will unreasonably interfere with Rail Passenger Service on the Hudson Line, and shall identify reasonable alternatives or conditions that would render the proposed plans acceptable.

(vii) If CSXT accepts and incorporates Amtrak's tendered alternatives or conditions, the proposed plans as so modified shall become final.

(viii) If Amtrak and CSXT are unable to reach agreement with respect to Amtrak's tendered alternatives or conditions, either party may seek remedy by dispute resolution and arbitration in accordance with the provisions of Section 17 hereof.

Section 6. Revenues.

(a) CSXT shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Rail Freight Service on the Hudson Line.

(b) Amtrak shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Rail Passenger Service provided by Amtrak on the Hudson Line.

(c) In addition to the aforesaid entitlements, Amtrak and CSXT shall be entitled to revenues derived from the Hudson Line as hereinafter provided in Sections 7 and 8 hereof.

Section 7. Existing Agreements Pertaining to the Hudson Line and the CSXT Property.

This Agreement is subject to the existing rights of CSXT and third parties including: (i) the CPR Agreements; (ii) any of CSXT's contracts or agreements pertaining to Sidetracks; and (iii) all existing agreements, leases, licenses or occupancies with third parties, including any affiliates of CSXT, whether recorded or not, including those set forth and described on Exhibit G, except those assigned to Amtrak pursuant to this Agreement and Exhibit D hereof (the "Existing Rights"). From and after the Execution Date, the Existing Rights may be exercised according to their terms and CSXT may modify such Existing Rights, provided that in doing so CSXT shall not enlarge the Existing Rights beyond the rights that exist as of the Execution Date if such enlargement would unreasonably interfere with Rail Passenger Service on the Hudson Line. Except as may be otherwise provided under this Section 7 and/or in Sections 18, and 19 hereof, CSXT shall be responsible for any and all obligations, liabilities, costs or expenses

arising out of or connected with the aforesaid contracts or agreements.

Section 8. Commuter Service, Clearances, Platforms and Agreements Pertaining to and Uses of the Hudson Line.

(a) Commuter service may not be provided on the Hudson Line without the express prior approval of Amtrak, CSXT, NYSDOT and FRA, which approval may be withheld at the sole discretion of each party.

(b) Upon the request of Amtrak during the Transition Period and during the Term of this Agreement, CSXT shall use its best efforts to facilitate communication among Conrail, Amtrak and fiber optic occupants, or other similar leaseholders and licensees on the Hudson Line, with respect to the installation, relocation and removal of fixtures and equipment in any lease, license or other agreement relating to the Hudson Line, including but not limited to agreements for pipe and wire, sign boards and fiber optics, with any third party. CSXT shall not unreasonably withhold its consent, to the extent any consent is afforded to CSXT under any such agreement between Conrail and any such third party, with respect to the installation, relocation and removal of fixtures and equipment on the Hudson Line provided such consent is consistent with Amtrak's reasonable endeavors to accommodate Rail Freight Service and will not materially lessen the quality of existing and future freight transportation provided to shippers on the Hudson Line.

(c) Notwithstanding any other provision of this Agreement to the contrary, Amtrak shall not, without the prior written consent of CSXT, either: (A) grant or convey to others any new interest, easement, lease, license or right of occupancy within the following clearances of any of the below specified tracks now or hereafter located on the Hudson Line or the CSXT Property that did not exist on the Commencement Date: (1.) Lateral clearances of less than ten

(10) feet from either side of the centerline of any main track and adjacent sidings and nine (9) feet from either side of the centerline of any Sidetrack, excepting passenger station facilities constructed to Amtrak standards and consistent with the Permitted Uses; and (2.) Vertical clearances for the entire lateral clearance width aforesaid of less than twenty-two (22) feet above the top of each rail of any such track; provided however that such vertical clearance may be diminished by maintenance activities, but to no less than 20 feet 6 inches; or (B) cause or permit the building, construction, alteration, erection, installation, demolition or removal of any structure or facility on the Hudson Line within the following clearances of any track now or hereafter located on the Hudson Line or the CSXT Property: (1.) Lateral clearances of less than ten (10) feet from either side of the centerline of any main track and adjacent sidings and nine (9) feet from either side of the centerline of any Sidetrack, excepting passenger station facilities constructed to Amtrak standards and consistent with the Permitted Uses; and (2.) Vertical clearances for the entire lateral clearance width of any such track of less than twenty-two (22) feet above the top of rail of any such track; provided however that such vertical clearance may be diminished by maintenance activities, but to no less than 20 feet 6 inches.

(d) Nothing in this Agreement shall require Amtrak to alter, replace or remove any structure or facility on the Hudson Line that as of the Commencement Date does not comply with the clearances identified in Subsection (c), nor to comply with those clearances when remodeling or renewing a structure or facility existing on the Hudson Line that does not meet those clearances on the Commencement Date. If CSXT wishes that during the course of such remodeling or renewing that any such existing structure or facility have its clearances increased to meet the clearances in this Subsection, Amtrak shall undertake to make the additional modifications necessary to obtain such clearances if such modifications are feasible and are done

at CSXT's sole cost.

(e) (A) Existing station platforms on the Hudson Line are permitted to remain.

(B) Regarding new High Level Platforms (as defined below) constructed after the Commencement Date: CSXT acknowledges and agrees that Amtrak will construct and utilize passenger platforms greater than eight (8) inches above top of rail ("High Level Platforms") along the Hudson Line. The Parties agree that if a receiver or shipper of cars, shipment or lading that exceeds 10 feet 8 inches in width ("Wide Load Car") locates on the Hudson Line during the Term of this Agreement, Amtrak will cooperate and share equally with CSXT the cost to re-establish and maintain sufficient clearance to operate Wide Load Cars to/from that receiver/shipper at locations of new High Level Platforms. Based on the needs of the specific situation, re-establishment could use one or a combination of the following methods selected at Amtrak's option: Dispatching and movement of Wide Load Cars over center, adjacent, or passing tracks including construction of additional crossovers; the construction of High Level Platforms with retractable edges; or additional method(s) that Amtrak and CSXT may agree upon. Amtrak shall design and construct any new High Level Platforms on the Hudson Line such that it can be retrofitted by mutual agreement at a future time with retractable edges to permit passage of Wide Load Cars. Subject to the foregoing and notwithstanding anything else to the contrary set forth in this Agreement, the design and construction of any such new High Level Platform shall be subject to, and provide for, facilities required to provide passenger services, including but not limited to all modes of ingress, egress, communication and signage, constructed to Amtrak standards and consistent with the Permitted Uses.

(f) CSXT shall have the exclusive right to enter into contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to the provision of Rail

Freight Service on the Hudson Line and the CSXT Property; second, with fiber optic occupants, or their successors and assigns, pertaining to fiber optic transmission systems to be located on the Hudson Line that would extend onto CSXT Property north or south of the Hudson Line; third, with CPR; fourth, with a shipper, recipient, and/or other user of Rail Freight Services over a Sidetrack; and fifth, with third parties with respect to the conveyance of mineral and air rights, provided, however, that the aforesaid rights of CSXT shall be exercised in a manner that shall not unreasonably interfere with Passenger Rail Service on the Hudson Line.

(g) CSXT shall collect any and all proceeds, fees, rents, charges or income arising out of or connected with such fiber optic agreements, leases and licenses, and CSXT shall pay to Amtrak on a periodic basis prorated amounts received by CSXT after the Commencement Date on a per mile proration (that is, if the subject agreement relates to 200 miles of rail corridor, and 43 miles are within the Hudson Line, CSXT shall deliver to Amtrak on a periodic basis 43/200ths of the amounts received by CSXT under the subject agreement).

(h) Amtrak shall have the exclusive right to enter into contracts, agreements, leases and licenses with fiber optic, sign board, pipe and wire occupants pertaining to fiber optic transmission, sign board and pipe and wire systems to be located on the Hudson Line that would not extend onto CSXT Property beyond the Hudson Line and Amtrak shall be entitled to or be responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from such interests, agreements, leases or licenses.

(i) Except as may be otherwise provided under Section 19 hereof, in each instance during the Term of this Agreement in which Amtrak either grants or conveys an interest,

easement, lease, license or right of occupancy or uses the Hudson Line on its own behalf under the provisions of this Section 8, Amtrak shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith. Except as may be otherwise provided under Section 19 hereof. in each instance during the Term of this Agreement in which CSXT either grants or conveys an interest, easement, lease, license or right of occupancy or uses the Hudson Line on its own behalf or exercises any right under this Section 8, CSXT shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith.

(j) Nothing contained in this Section 8 shall be construed as granting or conferring to Amtrak any additional right or privilege to use CSXT Property for any of the purposes contemplated in this Section 8.

(k) Amtrak shall be responsible for the approval, at Amtrak's sole discretion, and preparation of new public/private road/pedestrian crossing agreements on the Hudson Line, whether overhead, underpass or at grade, subject to CSXT's written consent which consent shall not be unreasonably withheld, conditioned or delayed. Such agreements shall be subordinate to this Agreement. A copy of each executed agreement shall be promptly forwarded to CSXT.

(l) The reasonable costs of reviewing the design plans and specifications described in this Section, whether internal or by third party outside consultants, shall be reimbursed to the reviewing party by the party submitting the plans and specifications for review. The reviewing party shall waive the application fee where prohibited by state statute or governmental regulation.

(m) CSXT, its contractors, licensees and invitees shall be required to execute Amtrak's then current Temporary Permit to Enter and any other related documentation

reasonably requested by Amtrak before entering the Hudson Line for the purposes described in this Section.

Section 9. Taxes and Assessments.

(a) It is the intent and understanding of the parties hereto that all services performed by Amtrak for CSXT under this Agreement, including, without limitation, those performed under Sections 3 and 4 hereof, are railroad transportation services, and accordingly are exempt from the payment of sales, use or other taxes by either Amtrak or CSXT. In the event any taxes, fees, charges, liens or assessments are imposed upon Amtrak for such performance of railroad transportation services for CSXT or on the acquisition of property for CSXT by Amtrak in conjunction therewith, then same shall be borne and paid by CSXT in their entirety, including, without limitation, any and all interest and penalties thereon, except penalties caused in whole or in part by Amtrak.

(b) CSXT shall be responsible for and pay, or indemnify Amtrak upon Amtrak's written demand for, all real property taxes (including interest and penalties thereon), relating to the Hudson Line.

(c) Each party shall pay and indemnify the other party against all taxes associated with that party's use or activities on the Hudson Line.

Section 10. Casualty Losses.

(a) In the event that any portion of the Hudson Line is damaged or destroyed by accident, flood, fire, civil disturbance, vandalism, earthquake, storm, terrorism, sabotage or act of God, and in the further event that repair, renewal or replacement is required by Amtrak or CSXT for the continued provision of their respective Railroad Operations contemplated under this

Agreement, then, in the event a party determines that such repair, renewal or replacement should be made for the exclusive benefit of that party, or the parties agree that such repair or replacement is required for the joint use or benefit of Amtrak and CSXT, Amtrak shall, either: (i) repair, or cause to be repaired, that portion of the Hudson Line so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. Any repair or replacement made for the exclusive benefit of one party shall be made at the cost and expense of that party. Any repair or replacement for joint use or benefit shall be made at Amtrak's cost and expense.

(b) Nothing in this Section 10 referring to an "accident" shall alter or modify the liability provisions of Section 19, or the insurance provisions of Section 20, and whenever any loss of, damage to or destruction of the Hudson Line occurs as a result of an accident involving the trains, locomotives, rail cars or rail equipment of, or on the account of Amtrak, CSXT, or any other railroad (including, without limitation, CPR and/or a detouring railroad), the provisions of Sections 19 and 21 shall govern the liability for the repair or replacement of Hudson Line.

Section 11. Discontinuance.

(a) Discontinuance of Rail Freight Service over the Hudson Line shall be governed by applicable statutory and regulatory authority, including exemption from the requirements to obtain such authority. In the event that such authority is granted by the appropriate regulatory authority, and then exercised by CSXT, CSXT shall bear the conditions, if any, imposed by the STB on CSXT to protect the interests of CSXT's employees in the discontinuance application or petition brought by CSXT under applicable statutory and

regulatory provisions and CSXT shall bear, at its cost and expense, any direct out-of-pocket, costs caused to Amtrak by the exercise of that authority, provided, however, that CSXT shall have no liability to Amtrak for the cost of any improvements to portion of the Hudson Line or any service outcome associated with the Hudson Line prior to or after such exercise.

(b) Nothing contained in this Section 11 shall be construed as precluding CSXT's assignment of this Agreement, in lieu of CSXT's aforesaid discontinuance, to any person in accordance with the provisions of Section 37 hereof, provided, however, that any such assignment shall be made subject to the provisions of this Section 11. Notwithstanding anything to the contrary set forth in this Agreement, CSXT shall not abandon the Hudson Line during the Term of this Agreement; however, CPR shall be free to discontinue its use of the Hudson Line at anytime during the Term of this Agreement.

(c) The foregoing provisions of Subsections 11(a) and (b), inclusive, pertain to discontinuances subject to the STB's jurisdiction. As of the date hereof, the discontinuance of sidetracks are statutorily exempt from the need to obtain abandonment or discontinuance authority from the STB. In the event that at any time during the Term of this Agreement any Sidetrack is not used by CSXT or another rail carrier for the purpose of providing Rail Freight Service for a period of thirty (30) consecutive months, then either party shall so notify the other party and Amtrak may notify CSXT of Amtrak's desire that such Sidetrack including the track and switch(es) connecting such Sidetrack to the Hudson Line or siding, be removed. In the event Amtrak so requests, then CSXT shall within sixty (60) days contact the shipper or last known user of such Sidetrack and determine whether use of such Sidetrack in the future for Rail Freight Service is reasonably foreseeable. If such use is not reasonably foreseeable, CSXT shall exercise all rights of cancellation under any contract or agreement pertaining to such Sidetrack and upon

the date said contract or agreement is cancelled, this Agreement. only insofar as it pertains to said Sidetrack, shall automatically terminate and be of no further force and effect and Amtrak shall be free to require CSXT to remove such Sidetracks at CSXT's cost and expense (or to obtain CSXT's consent to allow Amtrak to remove such Sidetrack at CSXT's cost and expense) and the materials so removed shall be made available to CSXT or such local third party as CSXT shall designate in writing. If no such contract or agreement exists, then upon the date of Amtrak's aforesaid notice, this Agreement. only insofar as it pertains to said Sidetrack, shall automatically terminate and be of no further force and effect, and Amtrak shall be free to require CSXT to remove such Sidetracks at CSXT's cost and expense (or to obtain CSXT's consent to allow Amtrak to remove such Sidetrack at CSXT's cost and expense) and the materials so removed shall be made available to CSXT or such local third party as CSXT shall designate in writing. Except to the extent so terminated, this Agreement shall remain in full force and effect. Nothing contained herein shall preclude Amtrak and CSXT from mutually agreeing to the removal of any such Sidetrack prior to the expiration of said thirty (30) month period.

Section 12. Compliance with Laws.

(a) Neither party hereto shall permit the Hudson Line to be used by the public without restriction or in such manner as might reasonably tend to impair Amtrak's lease of the Hudson Line or CSXT's rights and interests therein as contemplated under this Agreement. The foregoing: (i) shall not be construed to limit or restrict the rights and interests of the parties hereto as provided in this Agreement; and (ii) shall not in any way restrict the public use of the Hudson Line or the CSXT Property in the normal conduct of the Railroad Operations contemplated under Subsection 1(a) of this Agreement.

(b) Whenever Amtrak or CSXT enters into any new instrument referred to in Sections 7 or 8 hereof that grants to others a right to occupy or use the Hudson Line, then the party hereto entering into such new instrument shall provide therein that the person so occupying or using the Hudson Line shall comply with all applicable federal, state and local laws, regulations and ordinances respecting such occupancy or use.

(c) Amtrak shall comply with all federal, state and local laws, ordinances and regulations applicable to Amtrak in its use and operation of the Hudson Line. CSXT shall comply with all applicable federal, state and local laws, ordinances and regulations in its use and operation of the Hudson Line.

(d) Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall limit, restrict or derogate the rights of CSXT or Amtrak under any law or regulation applicable to them, and CSXT and Amtrak shall continue to enjoy the full benefit of, and retain all their respective rights under, any such law or regulation.

Section 13. Assigned Agreements.

Pursuant to the Assignment and Assumption Agreement attached hereto as Exhibit D, CSXT shall assign to Amtrak and Amtrak shall assume from CSXT those certain agreements listed in Exhibit D that the parties mutually agree to include in Exhibit D. With respect to any existing agreements that relate to Amtrak's operations on the Hudson Line that were inadvertently omitted from Exhibit D, Amtrak shall have the right to review such agreements, and if it approves in its sole discretion, will agree to amend Exhibit D to add such agreements accordingly. The parties agree to remove any agreements that were listed on Exhibit D that do not relate to the Hudson Line or do not relate to Amtrak's operations thereon. Upon expiration or

other termination of this Agreement, Amtrak will assign any agreements listed on Exhibit D and still in effect to CSXT.

Section 14. Additional Assets.

In addition to leasing the Hudson Line to Amtrak, CSXT shall allow Amtrak the right to use those certain assets listed on Exhibit C at no cost or expense to Amtrak, and otherwise on the terms and conditions provided herein. Amtrak shall have no right to dispose of any such assets, without prior written consent from CSXT, except for the disposition of salvage associated with maintenance, repair, replacement, renewal, rehabilitation, upgrading or improvements. As CSXT remains the owner of such assets, CSXT shall be entitled to full monetary compensation for any such assets it authorizes to be removed and/or sold by Amtrak (minus reasonable transaction costs), except where such assets are replaced by Amtrak with assets that are deemed equivalent in the reasonable judgment of CSXT.

Section 15. Payment of Bills and Records.

(a) All Amtrak payments to CSXT called for under this Agreement shall be made by Amtrak in accordance with Amtrak's standard payment procedures. In cases of a bona fide dispute, those portions of the billings which are undisputed shall be paid in accordance with the methods and time period set forth in Section 2 above, and any dispute reconciled by the parties hereto shall be promptly adjusted in the accounts of the subsequent months.

(b) The books, records and accounts of each party hereto, insofar as they pertain to the Hudson Line and this Agreement, shall be open to inspection by the other, upon reasonable request during normal business hours, at the offices of the parties hereto.

Section 16. Default and Breach.

(a) In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall commence curing such default or breach within sixty (60) days of notice to it from the other party of such default or breach, and the cure period shall be as reasonably agreed by the parties taking into account such factors as the magnitude of the cure, weather conditions, availability of resources, etc; provided, however, that nothing contained in this Section 16 shall be construed to modify or amend the provisions of Section 19 hereof or to limit or restrict either party's rights thereunder.

(b) The parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring; and that equitable relief, such as injunction, mandatory or otherwise, may be necessary in the event a party fails to cure a breach or default so occurring; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach so occurring shall be resolved exclusively by dispute resolution and arbitration in accordance with the provisions of Section 17 hereof.

(c) The parties acknowledge that a material breach of this Agreement shall expressly include, but not be limited to, the grant by Amtrak of any right or access related to the Hudson Line that is not expressly permitted by this Agreement.

(d) Except as otherwise provided, CSXT shall have no liability to Amtrak, directly or indirectly, for the cost of any improvements to the Hudson Line except as agreed to in this Agreement or any service outcome for passenger service on the Hudson Line for which Amtrak is responsible as a result of, prior to or after the termination or expiration of this

Agreement.

(e) NYSDOT shall have the option to cure any default of this Agreement at NYSDOT's sole cost, subject to the approval of the party in default.

Section 17. Dispute Resolution and Arbitration.

Any claim or controversy between Amtrak and CSXT concerning the interpretation, application or implementation of this Agreement shall be submitted to binding arbitration in accordance with the provisions of the Amtrak Arbitration Agreement dated April 16, 1971, among Amtrak and certain other railroads. Amtrak and CSXT shall provide notice of such arbitration to NYSDOT. The parties hereby agree to be bound by the provisions of said Arbitration Agreement, and agree that the Arbitration Panel shall be deemed to have the power to grant the remedy of termination for either Party. As between the parties hereto, the term of said Arbitration Agreement shall continue during the Term of this Agreement and this Agreement shall be deemed the "Basic Agreement" for purposes of said Arbitration Agreement. Notwithstanding anything to the contrary set forth in this Agreement, neither party shall have any liability for consequential damages related to this Agreement.

Section 18. Clearing of Wrecks.

Whenever Amtrak's or CSXT's use of the Hudson Line requires re-railing, wrecking service or wrecking train service, Amtrak shall be responsible for the performance of such service, including, without limitation, the repair and restoration of roadbed, track and structures. CSXT shall assist Amtrak in the performance of such service to the extent requested by Amtrak. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to

or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 19 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. Amtrak and CSXT shall perform the services under this Section in an expeditious manner in order to restore rail service on the Hudson Line.

Section 19. Liability.

(a) Applicability

The following provisions shall, from the effective date of this Agreement, govern the apportionment of liability and risk of damage between the parties for incidents which occur on or after such effective date in connection with the Rail Freight Services and Rail Passenger Services being operated and provided under this Agreement.

(b) Definitions

The definitions set forth in this Subsection 19 (b) shall be applicable to, and used in connection with, the terms and conditions set forth in this Section 19 only.

(i) "Amtrak Trains" means all trains operated by or on behalf of Amtrak and all trains operated by or on behalf of Amtrak for the benefit of NYSDOT or any passenger carrier.

(ii) "CSXT Trains" means all trains operated by or on behalf of CSXT and all trains operated by or on behalf of CSXT for the benefit of CPR or any other freight carrier.

(iii) "Amtrak Passenger" means (i) any person who is on board an Amtrak Train except for CSXT Employees (and occupants of CSXT business cars) who have not paid Amtrak's applicable passenger fare and are not traveling on personal business pursuant to pass privileges

granted by Amtrak, (ii) any person who is not on board any train who either has purchased a ticket valid on an Amtrak Train ("Amtrak Ticket") or holds a pass document reflecting personal pass privileges granted by Amtrak that is valid for travel on an Amtrak Train, and (iii) any person who is on, getting on or alighting from an Amtrak Train for the purpose of accompanying or meeting any person described in (i) or (ii) of this sentence.

(iv) "Amtrak Employee" means (i) a person who is an employee of Amtrak and (ii) any agent or contractor of Amtrak at the time in question (other than CSXT or any other entity contracting with Amtrak for operation of rail service on the Hudson Line), including any person who, at the time in question, is acting within the scope of his employment by such agent or contractor.

(v) "CSXT Employee" means (i) a person who is an employee of CSXT and (ii) any agent or contractor of CSXT at the time in question (other than Amtrak), including any person who, at the time in question, is acting within the scope of his employment by such agent or contractor.

(vi) "CSXT Property" means any locomotive, railroad car, including the contents thereof, and any other property, real or personal, or equipment owned by, leased to, used by or otherwise in the custody or possession of CSXT or any CSXT Employee, other than CSXT equipment or property being used by Amtrak other than for CSXT's account.

(vii) "Amtrak Property" means any locomotive, railroad car, including the contents thereof, and any other property, real or personal, or equipment owned by, leased to, used by or otherwise in the custody or possession of Amtrak or any Amtrak Employee, other than Amtrak equipment or property being used by CSXT other than for Amtrak's account.

(c) CSXT Employees

CSXT agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, directors and officers or howsoever the

same shall occur or be caused, from any and all liability for injury to or death of any CSXT Employee or CPR employee, or for loss of, damage to, or destruction of the property of any such CSXT Employee or CPR employee. It is expressly understood and agreed that CSXT Employees furnished to Amtrak, and CSXT Employees who are involved in CSXT's provision of services to Amtrak, shall be regarded for purposes of this Section as employees of CSXT, and not of Amtrak. It is further agreed that CSXT Employees and CPR employees who are also Amtrak passengers at the time in question shall be treated as Amtrak Passengers and not CSXT Employees, for purposes of this Section 19.

(d) Amtrak Employees

Amtrak agrees to indemnify and save harmless CSXT and CSXT Employees, irrespective of any negligence or fault of CSXT or CSXT Employees, directors and officers or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any Amtrak Employee, or for loss of, damage to, or destruction of the property of any such Amtrak Employee. It is expressly understood and agreed that Amtrak Employees furnished to CSXT, and Amtrak Employees who are involved in Amtrak's provision of services to CSXT, shall be regarded for purposes of this Section as employees of Amtrak, and not of CSXT.

(e) CSXT Property

CSXT agrees to indemnify and save harmless Amtrak and Amtrak Employees, directors and officers, irrespective of any negligence or fault of Amtrak or Amtrak Employees, directors and officers, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to or destruction of any CSXT property.

(f) Amtrak Property

Amtrak agrees to indemnify and save harmless CSXT and CSXT Employees, directors and

officers, irrespective of any negligence or fault of CSXT or CSXT Employees, directors and officers or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to or destruction of any Amtrak property.

(g) Amtrak Passengers

Amtrak agrees to indemnify and save harmless CSXT and CSXT Employees, directors and officers, irrespective of any negligence or fault of CSXT or CSXT Employees, directors and officers, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any Amtrak passenger and for loss of, damage to, or destruction of any property of any such passenger.

(h) Third Parties: Grade crossings and off-premises - CSXT

Subject to the provisions of Section 19(j), CSXT agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, or for loss of, damage to, or destruction of any property, other than persons and property for which Amtrak is responsible under Sections 19(d), 19(f) and 19(g) if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with a CSXT Train at the intersection at grade of a street or road, whether public or private, and the Hudson Line, or (ii) is caused by the impact upon a person or property located off of the Hudson Line of a CSXT Train or the impact upon such person or property of the explosion or release of the contents of such train.

(i) Third parties: Grade crossings and off-Premises - Amtrak

Subject to the provisions of Section 19(j), Amtrak agrees to indemnify and save harmless CSXT

and CSXT Employees, irrespective of any negligence or fault of CSXT or CSXT Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, or for loss of, damage to, or destruction of any property, other than persons and property for which CSXT is responsible under Sections 19(c), 19(e) and 19(k) if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with an Amtrak Train at the intersection at grade of a street or road, whether public or private, and the Hudson Line, or (ii) is caused by the impact upon a person or property located off of the Hudson Line of an Amtrak Train or the impact upon such person or property of the explosion or release of the contents of such train.

(j) Third parties off Premises: Joint Accidents

In the event that an accident involving both an Amtrak Train or other equipment which is Amtrak property ("Amtrak Equipment") and a CSXT Train or other equipment which is CSXT Property ("CSXT Equipment") results in the injury or death of any person, or the loss of, damage to, or destruction of any property, other than persons or property specified in Sections 19(c), 19(d), 19(e), 19(f), 19(g) and 19(k) (or persons or property for which CSXT is responsible pursuant to Section 19(l) and such injury, death, loss, damage or destruction occurs when such person or property is located off of the Hudson Line, then as between the parties:

(i) CSXT shall bear any and all of the financial responsibility for liability for such injury, death, loss, damage, or destruction, irrespective of any negligence or fault of Amtrak or Amtrak Employees, if, as between the parties, the immediate cause of such injury, death, loss, damage, or destruction was (A) the impact of CSXT Equipment, or the impact or release of the contents thereof, or (B) the impact of any explosion of CSXT Equipment, or the contents thereof; or (C) a

fire that originated in CSXT Equipment, or the contents thereof;

(ii) Amtrak shall bear any and all of the financial responsibility for liability for such injury, death, loss, damage, or destruction, irrespective of any negligence or fault of CSXT or CSXT Employees, if, as between the parties, the immediate cause of such injury, death, loss, damage or destruction was (A) the impact of Amtrak Equipment, or the impact or release of the contents thereof, or (B) the impact of any explosion of Amtrak Equipment, or the contents thereof, or (C) a fire that originated in Amtrak Equipment, or the contents thereof; and

(iii) If the parties cannot agree whether the immediate cause of the injury, death, loss, damage or destruction in question is covered by paragraph (i) or by paragraph (ii) above, CSXT will assume control of the defense of the action and upon final resolution thereof (whether by settlement or judgment), the parties shall submit to the National Arbitration Panel the question of the "immediate cause of such injury, death, loss, damage or destruction." If the National Arbitration Panel concludes that neither Subsection (i) nor Subsection (ii) is applicable, then the National Arbitration Panel shall apportion the financial responsibility for such judgment or settlement and all related expenses of the defense of the action, on the basis that the Panel determines the operation of the equipment by or on behalf of each party contributed to the immediate cause of such injury, death, loss, damage or destruction.

(k) CSXT Business Cars

CSXT agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons or property for which Amtrak is responsible under Sections 19(d), 19(f), 19(g) and 19(i) where such injury, death, loss, damage, or

destruction involves the occupant of a CSXT business car or his property.

(l) Hazardous Substances

CSXT agrees to indemnify and save harmless Amtrak and Amtrak Employees, irrespective of any negligence or fault of Amtrak or Amtrak Employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons and property for which Amtrak is responsible under Subsections 19 (d), (f) and (g), where such injury, death, loss, damage or destruction arises from the transportation or use in CSXT Trains on the Hudson Line of hazardous or toxic materials as defined in applicable federal or state laws or regulations. For purposes of this provision, hazardous or toxic materials shall also include petroleum, crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

(m) Third parties: Amtrak Residuals

Amtrak agrees to indemnify and save harmless CSXT and CSXT Employees, irrespective of any negligence or fault of CSXT or CSXT Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons or property for which CSXT is responsible under Sections 19(c), 19(e), 19(h), 19(j), 19(k) and 19(l), where such injury, death, loss, damage, or destruction arises from activities conducted pursuant to this Agreement.

(n) No Claims for Other Rail service

Notwithstanding the provisions of this Section 19, other than Subsection 19(p) or 19(q), Amtrak and CSXT agree that neither shall look to the other or endeavor to hold the other liable or otherwise seek payment from the other with respect to any liabilities relating to or arising out of

the operation on the Hudson Line of commuter, freight or any other rail service operated by or on behalf of parties other than Amtrak or CSXT. The parties specifically agree that the indemnification with respect to liability to third parties set forth in Sections 19(k), 19(l) and 19(m) shall expressly exclude any liabilities with respect to damage, injury, loss, destruction or death of passengers, employees or property of any such third party rail service.

(o) Cooperation and Information

In the event of any suit brought against either CSXT or Amtrak asserting a liability against which the other has agreed to indemnify and save harmless the party sued, the indemnifying party shall, at its sole cost and expense, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued. The party sued shall promptly upon the bringing of any such suit against it give notice thereof to the indemnifying party and thereafter provide all such information as may from time to time be required. Each party shall furnish to the other all such information relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by this Agreement as such other party may from time to time request: all costs incurred in furnishing such information shall be borne by the party requesting such information.

(p) CPR Cars and Trains

For the purpose of this Section 19:

- (i) CPR cars moved in haulage service in CSXT trains shall be deemed to be CSXT cars, and
- (ii) If the D&H - CSXT New York Trackage Rights Agreement, to the extent related to operation over the Hudson Line, has not been assigned or partially assigned to Amtrak, and CPR has reinstituted operations pursuant to that agreement over the Hudson Line, then trains so operated by CPR (each a "CPR Train"), shall be deemed to be CSXT Trains.

(q) Other Passenger Operators

For the purpose of this Section 19, whenever any passenger service is operated over the Hudson Line by any party other than Amtrak, the trains so operated shall be deemed to be Amtrak Trains.

Section 20. Insurance.

Amtrak shall maintain during the Term of this Agreement insurance and self insurance coverage that complies with the liability requirements contained in title 49 U.S.C. Section 28103.

Section 21. Environmental.

(a) Beginning on the Commencement Date, and throughout the Term of this Agreement, Amtrak shall:

- 1 operate, maintain and dispatch the Hudson Line in compliance in all material respects with any applicable Environmental Law and be responsible for making any notification or report concerning the Hudson Line or operations thereon required to be made by any applicable Environmental Law;
- 2 maintain in full force and effect all permits or approvals required by any Environmental Law applicable to Amtrak for operation of the Hudson Line;
- 3 perform any Remediation required to address Environmental Contamination, Environmental Claims or violations of Environmental Law.
- 4 not create or operate on the Hudson Line (A) anything determined by a public authority having jurisdiction to be a nuisance, or (B) any landfill or dump, or (C) any hazardous waste management facility or solid waste disposal facility as defined by Environmental Law;
- 5 not manufacture, use, generate, transport, treat, store, release, dispose, or handle any hazardous substance on the Hudson Line except in the

- ordinary course of its business, without the written permission of CSXT;
- 6 within ten (10) business days notify CSXT in writing of and provide any reasonably requested documents upon learning of any of the following which arise in connection with the Hudson Line: any liability for response or corrective action, natural resource damage, or other harm pursuant to CERCLA, RCRA, or any comparable applicable state law; any Environmental Claim; any violation of an Environmental Law or Release, threatened Release, or disposal of a hazardous substance; any restriction on the ownership, occupancy, use, or transferability of the Hudson Line arising pursuant to any (A) Release, threatened Release, or disposal of a hazardous substance or (B) Environmental Law; or any environmental, natural resource, health, or safety condition which could materially impair the condition of the Hudson Line;
- 7 allow CSXT or its representatives from time to time at CSXT's reasonable discretion and expense to inspect the Hudson Line and conduct an environmental audit or assessment (including invasive soil or groundwater sampling), including, without limitation, to facilitate any sale or lease of property adjoining the Hudson Line.
- (b) For any Costs which at any time or from time to time may be claimed, suffered or incurred in connection with Environmental Contamination, any Environmental Claim or violation of Environmental Law occurring or arising from conditions that occur or activities that were conducted on the Hudson line prior to the Commencement Date, the terms of the Master Agreement shall control.
- (c) 1) Without regard to fault, CSXT shall defend, indemnify and hold harmless Amtrak, and its parent corporations, subsidiaries and affiliates, and all of its and their directors, officers, agents or employees, from and against any Costs which at any time or from time to time may be claimed, suffered or incurred in connection with Environmental Contamination, any Environmental Claim or violation of Environmental Law occurring or arising from conditions that occur or activities that were conducted on the Hudson Line on or after the Commencement Date, but only if occurring or arising from freight operations and provided that CSXT has

reviewed and approved any Remediation plans, such approval not to be unreasonably withheld. The obligation to indemnify Amtrak shall survive the Term of this Agreement.

2) Without regard to fault, Amtrak shall defend, indemnify and hold harmless CSXT, and its parent corporations, subsidiaries and affiliates, and all of its and their directors, officers, agents or employees, from and against any Costs which at any time or from time to time may be claimed, suffered or incurred in connection with a breach of Section 21(a)(1-7), Environmental Contamination, any Environmental Claim or violation of Environmental Law occurring or arising from conditions that occur or activities that were conducted on the Hudson Line on or after the Commencement Date, except as provided in subsections 21(c)(1) and 21(d). The obligation to indemnify CSXT shall survive the Term of this Agreement.

- (d) For any Costs which at any time or from time to time may be claimed, suffered or incurred by either party in connection with Environmental Contamination, any Environmental Claim or any violation of Environmental Law on the Hudson Line (i) that was caused by a party other than CSXT, a rail freight operator using the Hudson Line pursuant to agreement with CSXT, Amtrak, or a passenger rail operator using the Hudson Line pursuant to agreement with Amtrak; and (ii) for which it cannot be determined whether the Environmental Contamination, Environmental Claim or violation of Environmental Law occurred before or after the Commencement Date, the Parties shall equally bear any such Costs of remediating the Hudson Line, provided that CSXT has reviewed and approved any Remediation plans, such approval not to be unreasonably withheld. In addition, the Parties shall cooperate in the investigation and pursuit of contribution to Costs from other parties responsible for the Environmental Contamination or Claim.

(e) For purposes of this Section.

1 “Costs” means all liabilities, losses, costs, damages, punitive damages, Natural Resource damages, expenses, claims, diminution in value, attorneys' fees, experts' fees, consultants' fees, penalties, fines, obligations, judgments and disbursements, as well as expenses of Remediation and any other remedial, removal, response, abatement, cleanup, legal, investigative, monitoring, or record keeping costs and all expenses related thereto, whether incurred voluntarily or mandated by Requirements of Environmental Law, but excluding costs related to damage to personal property or injury to persons which are covered by Section 19 of this Agreement.

2 “Disposal” (or “disposed”) shall have the meaning specified in RCRA.

3 “Environmental Claim” means any claim; loss; demand; action; cause of action; suit or other legal proceeding which seeks to impose or leads to the imposition of any Costs; damage assessment; punitive damage assessment; fine, penalty, expense, liability, criminal liability, judgment, governmental or private investigation relating to Remediation or compliance with Requirements of Environmental Laws; proceeding; lien; personal injury, Natural Resource damage or Hudson Line damage, whether threatened, sought, brought or imposed, that is related to or that in any way seeks to impose liability regarding the Hudson Line or operations conducted on the Hudson Line, including, but not limited to, matters concerning (A) improper use of wetlands or other protected land or wildlife; (B) noise; (C) pollution, contamination, damage, impairment, preservation, protection, Remediation or clean-up (on-site or off-site) of air, surface water, ground water, sediments, soil, wetlands or other Natural Resources; (D) generation, handling, discharge, Release, threatened Release, treatment, storage, disposal or transportation of solid, gaseous or liquid waste; (E) exposure, injury to, death of or threat to the health or safety of any person or persons or damage to the Hudson Line caused directly or indirectly by Hazardous

Substances; (F) the manufacture, processing, distribution in commerce, use, treatment, storage, disposal or Remediation of Hazardous Substances; (G) destruction caused directly or indirectly by Hazardous Substances or the Release of any Hazardous Substance on any Hudson Line (whether real or personal); (H) the implementation of spill prevention plans relating to Hazardous Substances; (I) community right-to-know and other disclosure laws; (J) maintaining, disclosing or reporting information to governmental authorities under any Environmental Law; or (K) failure to hold, maintain or comply with any Environmental Permit. The term "Environmental Claim" also includes any Costs incurred in responding to efforts to require Remediation and any claim based upon any asserted or actual breach or violation of any Requirements of Environmental Law, or upon any event, occurrence or condition as a consequence of which, pursuant to any Requirements of Environmental Law, (Y) any owner, operator or person having any interest in the Hudson Line, including, without limitation, any mortgagee of the Hudson Line or the beneficiary of any deed of trust of the Hudson Line, shall be liable with respect to any Environmental Claim or otherwise suffer any loss or disability or (Z) the Hudson Line shall be subject to any restriction on use, ownership or transferability. An "Environmental Claim" further includes a proceeding to issue, modify, revoke or terminate an Environmental Permit.

4 "Environmental Contamination" means any land, sediment, surface water, ground water, structure or location that has been contaminated or adversely affected by Hazardous Substances.

5 "Environmental Laws" or "Requirements of Environmental Laws" means any and all laws, rules, permits, regulations, ordinances, judgments, or orders now or hereafter in effect of any federal, state or local executive, legislative, judicial, regulatory or administrative agency, board or authority or any judicial or administrative decision relating thereto that could give rise to or form the basis for any Environmental

Claim.

- 6 “Environmental Matters” means any matter, dispute, proceeding or obligation of any nature falling within the scope of this Section 21. For the avoidance of doubt, matters related to that certain Joint Defense and Funding Agreement between CSXT, Amtrak, Delaware and Hudson Railroad, d/b/a Canadian Pacific Railway and Metro North Commuter Railroad Company shall be governed by that agreement and excluded from this Section 21.
- 7 “Environmental Permits” means any permit, license, registration, waste identification number, approval or other authorization relating to business activities or operations on the Hudson Line required by any Environmental Law.
- 8 “Governmental Authority” means any federal, state or local government or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof or any federal, state or local court or tribunal.
- 9 “Hazardous Substances” means (A) those substances included within the statutory and/or regulatory definitions of “hazardous substance,” “hazardous waste,” “extremely hazardous substance,” “regulated substance,” “contaminant,” “hazardous materials” or “toxic substances,” under any Environmental Law, (B) those substances listed in 49 C.F.R. 172.101 and in 40 C.F.R. Part 302; (C) any material, waste or substance which is (i) petroleum, oil or a fraction thereof, (ii) asbestos or asbestos containing material, (iii) polychlorinated biphenyls, (iv) formaldehyde, (v) designated as a “hazardous substance” pursuant to 33 U.S.C. §321 or listed pursuant to 33 U.S.C. §317, (vi) explosives, (vii) radioactive materials (including naturally occurring radioactive materials), (viii) chemicals used to treat or coat wood or wood that has been so treated or coated, or (ix) Solid Wastes; (D) radon gas in an ambient air concentration exceeding four picocuries per liter (4 pCi/l); and (E) such other substances, materials, or wastes that are or become classified or

regulated as hazardous or toxic under any federal, state or local law or regulation.

10 “Natural Resources” shall have the meaning specified in CERCLA.

11 “RCRA” means the Resource Conservation and Recovery Act. 42 U.S.C. § 6901, et. seq.

12 “Release” (or “released”) shall have the meaning specified in CERCLA.

13 “Remediation” means a type of action required by a Governmental Authority or necessary to ensure compliance with the Requirements of Environmental Law, including by way of example (A) the removal and disposal or containment (if containment is practical under the circumstances and is permissible within Requirements of Environmental Law) or monitoring of any and all Hazardous Substances on the Hudson Line; (B) the taking of reasonably necessary precautions to protect against the Release or threatened Release of Hazardous Substances at, on, in, about, under, within or near the air, soil, surface water, groundwater or soil vapor on the Hudson Line or any public domain affected by the Hudson Line or any surrounding areas thereof; (C) any action necessary to mitigate damage to wetlands, pinelands or other protected land or reclaim the same or to protect and preserve wildlife species; (D) any action necessary to meet the requirements of an Environmental Permit; (E) any action required to satisfy Requirements of Environmental Law; and (F) any action required to redress or restore damages to or achieve restoration of Natural Resources as a result of Releases from the Hudson Line.

14 “Solid Waste” shall have the meaning ascribed to it in RCRA.

- (f) The obligations of the parties and the remediation and cure levels required under this Agreement shall not exceed those levels consistent with the existing use of the Hudson Line for Railroad Operations as of the Commencement Date.

Section 22. Force Majeure.

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, said party shall not be liable or responsible for any delays due to strike, embargo, derailment, lockout, casualty, fire, flood, unusual weather conditions, earthquake, act of God, war, terrorism or threatened acts of terrorism, court order, work stoppage, nuclear incident, riot, civil disturbance, public disorder, criminal act of other entities, governmental regulation or control, governmental or judicial restraint or other such causes beyond the reasonable control of said party (collectively, "Force Majeure"); and in any such event of Force Majeure, said time period shall be extended for the amount of time said party is so delayed, provided that this Section 22 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such event of Force Majeure has been removed.

Section 23. Extension, Waiver, Amendment and Successors.

(a) This Agreement may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto with the consent of NYSDOT which shall not be unreasonably withheld, conditioned or delayed.

(b) In each instance in which either Amtrak or CSXT is entitled to any benefit hereunder, Amtrak or CSXT, as the case may be, may: (i) extend the time for the performance of any of the obligations or other acts of the other party hereto; (ii) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein; and (iii) waive, in whole or in part, compliance with any of the terms and conditions of this Agreement by the other party hereto. Any agreement on the part of either Amtrak or CSXT to any such extension or waiver shall be valid only if set forth in an instrument

in writing signed and delivered on behalf of such party.

Section 24. Notices.

(a) Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or through the United States Postal Service, certified mail postage prepaid, or received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered to or received by the person to which it is addressed at the following addresses:

If to CSXT, to:

President
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz
CSX Corporation
Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station, 2955 Market Street
Philadelphia, PA 19104
Attention: Senior Director Host Railroads

with a copy to:

National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington DC 20002
Attention: General Counsel and Corporate Secretary

If to NYSDOT:

New York Department of Transportation
50 Wolf Road
Albany, NY 12232
Attention: Commissioner of Transportation

with a copy to:

New York Department of Transportation
50 Wolf Road
Albany, NY 12232
Attention: Chief Counsel

(b) Any notice party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other notice party to this Agreement, in the same manner as provided above for all other notices.

Section 25. Governing Law.

It is the intention of the parties hereto that the laws of the District of Columbia shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto.

Section 26. Counterparts.

This Agreement may be executed in two or more counterparts, including counterparts transmitted by facsimile or electronic transmission, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as

signatories each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 27. Interpretation.

Amtrak and CSXT acknowledge that the language used in this Agreement is language developed and chosen by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein", "hereof", "hereby", "hereunder" and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. "Including" shall mean "including but not limited to" unless expressly stated otherwise. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, provided that in the event of any inconsistency between such definition and any definition set forth in Appendix A hereto, the latter shall govern. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection, paragraph, or subparagraph of such Section.

Section 28. Exhibits.

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

Section 29. Entire Agreement.

The parties acknowledge the existence of the Master Agreement and Master Lease Agreement, and such other agreements between CSXT and Amtrak related to the Hudson Line as shown in Exhibit E attached hereto (the "Ancillary CSXT/Amtrak Hudson Line Agreements"). that have, as applicable, governed the operations of CSXT and Amtrak on the Hudson Line. During the Term of this Agreement, the parties intend by this Agreement to keep the Master Lease Agreement, and the portion of the Master Agreement related to Stations, in force with respect to the Amtrak stations on the Hudson Line located in Schenectady, Rensselaer, Hudson and Rhinecliff, New York and CSXT real and personal property in and around such stations (the "Stations"), but temporarily supersede that portion of the Master Agreement not related to Stations and the Ancillary CSXT/Amtrak Hudson Line Agreements with this Agreement with respect to the operations of CSXT and Amtrak on the Hudson Line other than those subjects governed by the Master Agreement and Master Lease Agreement with respect to the Stations: provided, however, that the Master Agreement and the Ancillary CSXT/Amtrak Hudson Line Agreements, including any future amendments and cumulative adjustments as provided therein, shall continue to apply to the operations of Amtrak and CSXT on the Hudson Line after the expiration or earlier termination of this Agreement. For the avoidance of doubt, that certain Joint Defense and Funding Agreement between CSXT, Amtrak, Delaware and Hudson Railroad, d/b/a Canadian Pacific Railway, and Metro North Commuter Railroad Company shall not be affected by this Agreement. Other than as expressly set forth in this Section 29, this Agreement

constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof.

Section 30. Waiver.

Neither the failure to exercise nor any delay in exercising on the part of either party hereto any exception, reservation, right, privilege, license, remedy or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any exception, reservation, right, privilege, license, remedy or power under this Agreement preclude any other or further exercise of the same or of any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence.

Section 31. Liens.

(a) Except as set forth in this Agreement, Amtrak expressly agrees that it will not allow any lien on or encumbrance against the Hudson Line, or any portion thereof, without first obtaining CSXT's express written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Amtrak will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by Amtrak during the Term of this Agreement in the construction, repair, renewal, replacement and maintenance of the Hudson Line. Amtrak will defend, indemnify and hold harmless CSXT from all such claims, liens, or demands

whatsoever. In the event this Agreement is terminated or expires, Amtrak shall return the property to CSXT free and clear of any such liens, claims and demands. This Section shall not apply to any claim or lien for material and labor or either of them used, contracted for, or employed by CSXT.

Section 32. Reserved Rights.

(a) In addition to the right to provide Rail Freight Service as set forth in this Agreement, CSXT reserves unto itself, its affiliates, subsidiaries, parents, successors and/or assigns, the following property rights hereinafter collectively referred to as the “Reserved Rights,” provided, however, that CSXT shall not agree to enlarge any Reserved Rights beyond the rights that exist as of the Execution Date if such enlargement would unreasonably interfere with Passenger Rail Service on the Hudson Line:

(i) the right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove utility systems and their associated and appurtenant equipment and facilities as well as the right to attach the utility systems and related facilities to existing bridges and to install them in existing tunnels; and the right of ingress and egress for access purposes:

(ii) the right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove commercial poster panels and towers and their associated and appurtenant equipment and facilities as well as the right to attach the commercial poster panels and towers and related facilities to existing bridges and to install them in existing tunnels; and the right of ingress and egress for access purposes; and

(iii) the right to convey, take or extract all minerals, mineral rights and air

rights in, on or under the Hudson Line. The right to take or extract shall be subject to and in accordance with the provisions of Section 5(c).

Section 33. Time of the Essence.

It is understood and agreed by the parties hereto that the prompt and timely performance of all obligations, responsibilities and conditions under this Agreement is of the essence of this Agreement.

Section 34. Performance of Agreement.

Except as is otherwise expressly provided in this Agreement, where any service is required or permitted of either party to this Agreement, the performance of such service may be delegated to such agent, contractor or employee as either such party may designate; provided, however, that nothing contained herein shall be construed as creating or diminishing any right in Amtrak or CSXT or to cause a transfer, release or discharge of any or all of Amtrak's or CSXT's obligations under this Agreement. The parties acknowledge that a substantial portion of Amtrak's and CSXT's employees are covered by collective bargaining agreements that govern the terms and conditions of their employment, including, without limitation, rates of pay and scope of work.

Section 35. Prohibition of Third Party Beneficiaries.

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties

hereto and NYSDOT and their respective legal representatives, successors or assigns any right or benefit under or by reason of this Agreement; provided, however that nothing contained in the foregoing provision shall be construed to limit or restrict the enjoyment and use of the rights contained in Sections 1, 7 and 8 of this Agreement and the Exhibits hereto or any other party's(ies') enjoyment and use of any and all of the rights that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s) license(s) or easement(s) entered into between Amtrak or CSXT and such other party(ies) pursuant to Sections 1, 7 and 8 hereof and the Exhibits hereto.

Section 36. Execution Date, Commencement Date, and Term.

(a) "Execution Date" is deemed to be as of September 23, 2011. The period between the Execution Date and Commencement Date shall be the "Transition Period." During the Transition Period, Amtrak and CSXT shall (i) collaborate on an efficient and orderly transition of operations of the Hudson Line from CSXT to Amtrak, as outlined in a CSXT/Amtrak Transition Agreement, and (ii) endeavor to satisfy the conditions listed in Subsection (b) of this Section 36.

(b) "Commencement Date" is the date upon which this Agreement shall become effective, which shall be the later of the date upon which all of the following conditions have been satisfied or waived by the party entitled to satisfaction of the condition, or November 5, 2012; provided that if the Commencement Date has not occurred on or before October 31, 2013, this Agreement shall automatically terminate, unless the Term is extended by the mutual agreement of the parties:

- (i) Amtrak and CSXT shall cooperate in the preparation of any and all

applications, petitions, and notices necessary or desirable in connection with this transaction, which shall be filed by Amtrak with the STB and any other governmental authority with jurisdiction over the Hudson Line, any and all applications, petitions, notices, and/or secure any and all approvals or exemptions from the STB and other such governmental authorities, that may be required for the lease of the Hudson Line and Amtrak's operations thereon and thereover, and such governmental authorities shall have waived their requirement to approve, or shall have granted approval, to all such applications. Amtrak shall be responsible for any and all filing fees with respect to the aforesaid filings;

(ii) the STB shall have found that it does not have jurisdiction over the transaction contemplated in this Agreement, and/or has not imposed any conditions, including labor protective conditions, which either party in its sole and absolute discretion deems unacceptable;

(iii) the parties shall have complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to this Agreement taking effect;

(iv) the transaction shall not have been stayed or enjoined by the STB or by any court;

(v) Amtrak and CSXT shall have obtained all necessary third party consents from their respective applicable contractual counterparties, all on terms and conditions acceptable to Amtrak and CSXT, and CSXT shall have obtained a subordination and non-disturbance agreement from any CSXT lender holding a mortgage on any portion of the Hudson Line real property owned by CSXT;

(vi) any claim, litigation, labor dispute or work stoppage threatened or pending

in connection with the transaction contemplated in any agreement related to the Hudson Line shall have been resolved;

(vii) to the extent either party may deem necessary, CSXT and Amtrak shall have reached labor agreements with each of their respective unions representing its respective employees affected by this Agreement which provide for the transfer of work to be assumed by Amtrak pursuant to this Agreement from CSXT to Amtrak;

(viii) CSXT and Amtrak shall have completed their respective duties in a CSXT/Amtrak Transition Agreement governing the transition from CSXT to Amtrak operation of the Hudson Line;

(ix) the following documents shall have been fully executed and delivered to Amtrak: NYSDOT/Amtrak Dispatching and Maintenance Agreement; NYSDOT/Amtrak Implementing Agreement; and NYSDOT/Amtrak Service Outcomes Agreement, it being understood that CSXT shall have no participation in or liability under such agreements:

(x) the approval from the parties' respective Boards of Directors, if needed;

(xi) Amtrak shall have provided notification to the FRA pursuant to 49 C.F.R. §213.5(c) and at least thirty (30) days shall have passed from the date of such notification;

(xii) the Master Property Lease shall have been amended to the mutual satisfaction of the parties to include the Schenectady, Rensselaer, Hudson and Rhinecliff Stations;

(xiii) CSXT and Amtrak shall have mutually agreed upon the description of the Hudson Line to be attached hereto as Exhibit A pursuant to Appendix A and Exhibit A shall have been revised accordingly to the mutual satisfaction of the parties and attached to this Agreement;

(xiv) CSXT and Amtrak shall have mutually agreed upon the personal property to be listed in Exhibit B and to be removed from the Hudson Line by CSXT pursuant to Section 1(f) and Exhibit B shall have been attached to this Agreement;

(xv) CSXT and Amtrak shall have mutually agreed upon the final list of additional assets to be included in Exhibit C and Exhibit C shall have been revised accordingly to the mutual satisfaction of the parties and attached to this Agreement;

(xvi) CSXT and Amtrak shall have mutually agreed upon the agreements to be assigned by CSXT and assumed by Amtrak and to be listed in Exhibit D, and shall have executed the Assignment and Assumption of Various Agreements, Leases, Licenses and Ordinances, attached hereto as Exhibit D and Exhibits D, D-1 and D-2 shall have been attached to this Agreement;

(xvii) CSXT and Amtrak shall have mutually agreed upon the list of known existing occupancies and agreements pertaining to the Hudson Line to be listed in Exhibit G pursuant to Section 7 and Exhibit G shall have been attached to this Agreement: and

(xviii) Amtrak shall have, in its discretion, satisfied itself that it is able to staff the Hudson Line adequately with all personnel necessary to operate and maintain the Hudson Line.

Notwithstanding anything to the contrary set forth in this Agreement, the parties shall have the right to review any documentation, information or other materials required to be provided as an Exhibit to this Agreement, and which are exchanged between the parties between the Execution Date and the Commencement Date (the "Materials"). If after its review a party believes that the Materials will have a material negative effect on that party's finances or operations, that party shall have the right to prohibit the Materials from being added to this Agreement, unless the other party amends or otherwise modifies the Materials to satisfactorily

address the objections and/or reimburses the objecting party for any expense incurred as a result of the Material.

(c) Unless otherwise terminated as provided herein, this Agreement shall be for an initial term of twenty-five (25) years from the Commencement Date and shall be renewable thereafter at Amtrak's option for one (1) successive twenty-three (23) year period, provided that if Amtrak fails to provide CSXT with written notice of termination at least twelve (12) months prior to the expiration of the term then in effect, such renewal shall occur automatically. The initial term and any renewal period thereafter are collectively referred to herein as the "Term."

Section 37. Successors and Assigns/Assignment.

(a) This Agreement and all of its terms, conditions, covenants, rights and obligations herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

(b) Amtrak shall not assign or convey any interest in the Hudson Line or this Agreement to any person, firm, partnership, corporation or governmental entity without the express written consent of CSXT and NYSDOT, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) CSXT shall not assign or convey any interest in the Hudson Line or this Agreement to any person, firm, partnership, corporation or governmental entity without the express written consent of Amtrak and NYSDOT, which consent shall not be unreasonably withheld, conditioned or delayed.

(d) Assignment of this Agreement, in whole or in part, by Amtrak or CSXT, or their respective successors or assigns, shall forever release and discharge the assignor:

(i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, occurring from and after the date of such assignment, and

(ii) from any liability, cost and expense related to, arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, occurring from and after the date of such assignment.

(e) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have occurred, arisen or been incurred by such party under the terms of this Agreement prior to the assignment hereof or that arose as a result of acts or omissions of that party that occurred prior to the assignment hereof.

(f) NYSDOT and Amtrak are jointly granted a right of first refusal and for any proposed assignment by CSXT of its interest in the Hudson Line or this Agreement. CSXT shall give written notice to NYSDOT, Amtrak and FRA of any such proposed assignment. If either NYSDOT or Amtrak declines to participate in such joint right of first refusal, then the other may proceed alone to exercise the right.

(i) If at any time or from time to time during the Term of this Agreement, CSXT receives from a ready, willing and able purchaser a bona fide written offer acceptable to CSXT for the acquisition of its rights, interests and obligations in this Agreement, in whole or in part, then CSXT shall formally notify NYSDOT and Amtrak of such offer and provide NYSDOT and Amtrak with a true copy of such offer. NYSDOT and Amtrak, shall have a right of refusal as per this section to jointly acquire CSXT's rights, interests and obligations in this Agreement, upon the same terms and conditions, including, without limitation, compensation, set

forth in the aforesaid bona fide offer acceptable to CSXT. (In the event that the aforesaid offer's terms and conditions include an exchange of property in lieu of cash, then a cash equivalent acceptable to CSXT shall also be set forth.) NYSDOT and Amtrak shall exercise their aforesaid right of first refusal herein granted by giving written notice thereof to CSXT within forty-five (45) days of CSXT's aforesaid formal notice to NYSDOT and Amtrak. The aforesaid rights of refusal shall be subject to any preferential right(s) for the acquisition of CSXT's rights, interests and obligations in this Agreement that may exist from time to time during the Term under the CPR Agreements or Section 11 of this Agreement or any applicable federal, state or local law(s).

(ii) In the event that NYSDOT and Amtrak both decline or fail, for any reason, to exercise the aforesaid rights of first refusal, or in the event that NYSDOT and/or Amtrak exercise said right but are unable, for any reason, to consummate the acquisition and/or assignment in accordance with the terms and conditions of the bona fide offer, then the aforesaid right of first refusal as it pertains to such offer shall automatically terminate and be of no further force and effect.

(iii) NYSDOT and Amtrak's aforesaid rights of first refusal shall not apply to any transfer or assignment of CSXT's rights, interests and obligations in this Agreement, in whole or in part, to an affiliate of CSXT: provided, however, that such affiliate, its successors and assigns, shall take such transfer or assignment subject to the aforesaid provisions pertaining to NYSDOT and Amtrak's rights of first refusal to the extent applicable at the time of such transfer or assignment: and, provided, further, that CSXT unconditionally guarantees to NYSDOT and/or Amtrak the performance of all obligations of its affiliate under this Agreement.

(g) NYSDOT is granted a right of first refusal for any proposed assignment by Amtrak of their interest in the Hudson Line or this Agreement. Amtrak shall give prior written

notice to NYSDOT and FRA of any such proposed assignment.

(i) If at any time or from time to time during the Term of this Agreement, Amtrak receives from a ready, willing and able purchaser a bona fide written offer acceptable to Amtrak for the acquisition of the Amtrak's rights, interests and obligations in this Agreement, in whole or in part, then Amtrak shall formally notify NYSDOT of such offer and provide NYSDOT with a true copy of such offer. NYSDOT shall have a right of first refusal to acquire Amtrak's rights, interests and obligations in this Agreement, upon the same terms and conditions, including, without limitation, compensation, set forth in the aforesaid bona fide offer acceptable to Amtrak. (In the event that the aforesaid offer's terms and conditions include an exchange of property in lieu of cash, then a cash equivalent acceptable to the offeror and Amtrak shall also be set forth in said bona fide offer.) NYSDOT shall exercise its aforesaid right of first refusal herein granted by giving written notice thereof to Amtrak within forty-five (45) days of such Amtrak's aforesaid formal notice to NYSDOT. NYSDOT's aforesaid right of first refusal shall be subject to any preferential right(s) for the acquisition of such Amtrak's rights, interests and obligations in this Agreement that may exist from time to time during the Term under the CPR Agreements or Section 11 of this Agreement or any applicable federal, state or local law(s).

(ii) In the event that NYSDOT declines or fails, for any reason, to exercise its aforesaid right of first refusal, or in the event that NYSDOT exercises said right but is unable, for any reason, to consummate the acquisition and/or assignment in accordance with the terms and conditions of the bona fide offer, then NYSDOT's aforesaid right of first refusal as it pertains to such offer shall automatically terminate and be of no further force and effect.

(iii) NYSDOT's aforesaid right of first refusal shall not apply to any transfer or assignment of Amtrak's rights, interests and obligations in this Agreement, in whole or in part, to

an affiliate of Amtrak: provided, however, that such affiliate, its successors and assigns, shall take such transfer or assignment subject to the aforesaid provisions pertaining to NYSDOT's right of first refusal to the extent applicable at the time of such transfer or assignment; and, provided, further, that Amtrak unconditionally guarantees to NYSDOT the performance of all obligations of its affiliate under this Agreement.

Section 38. Incorporation of Recitals.

The recitals to this Agreement are true and correct and are hereby incorporated herein.

Section 39. Severability.

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

Section 40. Utilities.

Amtrak, no later than the Commencement Date, shall initiate, contract for and obtain in its sole name all utility services required for its use of or operations on the Hudson Line, including gas, electricity, telephone, water and sewer connections and services for the Term of this Agreement. Amtrak shall pay all charges for such services as they become due, and shall defend, indemnify and hold CSXT harmless from the costs of such services. The cost, if any associated with separating utilities used for Rail Freight Service from utilities used for Rail Passenger Service shall be shared equally by Amtrak and CSXT.

Section 41. Special Audits.

At any time, CSXT or Amtrak may perform a special audit if it has a reasonable belief that the other party is not in compliance with this Agreement. The cost of the audit shall be borne by the party conducting the special audit, provided that if such audit reveals a party is not in compliance with a material term of this Agreement, then the party not in compliance shall reimburse the other party for the costs of the audit. Any dispute over whether a party is in compliance with a material term of this Agreement, which cannot be settled by the parties themselves within sixty (60) calendar days of one party giving the other party notice of the dispute, shall be submitted to arbitration in accordance with the provisions of Section 17 herein. All special audits must be conducted by employees of CSXT or Amtrak.

Section 42. Public Funds.

(a) If Amtrak seeks public funding for any portion of the Hudson Line, other than from the United States or NYSDOT in connection with the Hudson Line Improvement Program, Amtrak shall give CSXT notice of its intent to seek such public funding.

(b) If Amtrak seeks public funding that will impose any restrictions or liens on the Hudson Line, Amtrak shall first give CSXT notice of its intent to seek such public funding and obtain CSXT's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. CSXT consents to the lien and any security interest of the United States on the Hudson Line and on this Agreement and hereby agrees to execute documentation provided by Amtrak to subordinate this Agreement to the lien and security interest of the United States, if required by the United States.

(c) If a public agency requests a security interest in Amtrak's leasehold interest in the Hudson Line, Amtrak shall give CSXT notice of such request and obtain CSXT's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. CSXT consents to Amtrak's leasehold interest in the Hudson Line being provided as a security interest to the United States.

Section 43. Effect of Termination or Expiration of Agreement.

(a) At least sixty (60) days prior to the expiration of this Agreement, or promptly upon the earlier termination of this Agreement, Amtrak shall submit all necessary applications, petitions and/or notices to the STB or any successor agency to effectuate a termination of this Agreement. Upon expiration or prior termination of this Agreement, CSXT shall have the right to enter onto and operate the Hudson Line. Subject to any statutory rights of access and/or use, upon obtaining any necessary regulatory authority or exemption, Amtrak will forthwith vacate and surrender the Hudson Line, all property and assets described in Exhibit C, and any improvements made thereon to CSXT, at which time the Master Agreement and Ancillary CSXT/Amtrak Hudson Line Agreements will automatically become effective and govern the rights and responsibilities of the parties regarding their respective operations on the Hudson Line.

(b) Upon expiration or earlier termination of this Agreement, Amtrak shall surrender the Hudson Line to CSXT, free and clear of all liens and encumbrances created by Amtrak except for any lien or security interest in favor of the United States, a condition necessary to conduct Rail Freight Service at the then-current level of service.

(c) Upon expiration or earlier termination of this Agreement, Amtrak shall, at no cost

to CSXT, assign to CSXT all agreements for new public/private road/pedestrian crossing agreements entered into by Amtrak pursuant this Agreement.

(d) It is understood by the parties hereto that Amtrak's obligations under this Agreement shall be subject to receipt of sufficient and timely reimbursement from NYSDOT as called for in the NYSDOT/Amtrak Dispatching and Maintenance Agreement. Notwithstanding anything to the contrary set forth in this Agreement, if at any time during the Term of this Agreement NYSDOT should fail to perform any of its obligations under the NYSDOT/Amtrak Dispatching and Maintenance Agreement, and such failure causes Amtrak to be unable to meet any obligations under this Agreement, then either Amtrak or CSXT shall have the right at any time following such failure to terminate this Agreement by providing twelve (12) months prior written notice to the other party and NYSDOT following such failure, such termination to become effective twelve (12) months following receipt thereof, subject to the following:

(i) thirty (30) days from the date of the notice, the Rent to be paid by Amtrak to CSXT and the compensation to be paid to Amtrak by CSXT under this Agreement shall be terminated permanently; and

(ii) during the twelve (12) month period referred to in this Section, the parties shall transfer the maintenance and dispatch obligations from Amtrak to CSXT, together with such other obligations as may be necessary to effect an efficient termination of this Agreement as promptly as reasonably possible after the notice of termination. Upon the completion of that transition, this Agreement shall be permanently terminated with no further obligation from one party to the other except those which by their express terms are to survive the termination of this Agreement.

Section 44. Eminent Domain.

Subject to any federal law applicable to Railroad Operations, in the event that at any time during the Term of this Agreement the whole or any part of the Hudson Line shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose, the following provisions shall be applicable:

- (a) Taking of Whole. If such proceeding shall result in the taking of the whole, then each party hereto shall have the unilateral right, upon written notice to the other and subject to the securing of any and all necessary governmental approvals, to terminate this Agreement in its entirety and the term hereof shall terminate and expire on the date title to the Hudson Line vests in the condemning authority, and the Usage Fee and any other sums or charges provided in this Agreement shall be adjusted as of the date of such vesting.
- (b) Taking of Part. If such proceeding shall result in the taking of less than all of the Hudson Line and accommodates Amtrak's or CSXT's use of the Hudson Line as contemplated herein, then this Agreement shall continue for the balance of its term as to the part of the Hudson Line remaining, and the Usage Fee and any other sums or charges provided in this Agreement shall only be adjusted as of the date of such taking to reflect any increase in Amtrak's or CSXT's cost or decrease in Amtrak's or CSXT's revenue as a result of the taking so occurring.
- (c) Temporary Taking. If the temporary use of the whole or any part of the Hudson Line shall be taken at any time during the Term of this Agreement for any public or quasi-public purpose, the party receiving notice thereof shall give prompt notice thereof to the other party and this Agreement shall be adjusted as of the date of such taking to reflect the taking so occurring. For purposes of this Section

44 temporary taking shall include all use or occupation of all or any portion of the Hudson Line that shall not exceed ninety (90) consecutive days of use or occupation. In the event that such temporary taking shall exceed such ninety (90) day period, then either Amtrak or CSXT may elect to treat such taking in accordance with the provisions of Subsections (i), (ii) and (iii) hereof.

- (d) Awards. Nothing contained herein shall be construed to prevent Amtrak from prosecuting any claim directly against the condemning authority for loss of its business, or depreciation to, damage to, or cost of removal of, or for the value of its leasehold interest, and any other interests or properties belonging to Amtrak, and the parties shall share any award received by either in a manner consistent with the loss experienced by either party.
- (e) Each party hereto shall provide prompt notice to the other party of any eminent domain proceeding involving the Hudson Line. Each party shall be entitled to participate in any such proceeding, at its own cost and expense, and to consult with the other party, its attorneys, and experts. Amtrak and CSXT shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure the continued use of the Hudson Line for their respective Railroad Operations.
- (f) The provisions of this Section 44 shall apply to and govern all takings involving the Hudson Line by exercise of the right of eminent domain as aforesaid.

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and NATIONAL RAILROAD PASSENGER CORPORATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

ATTEST

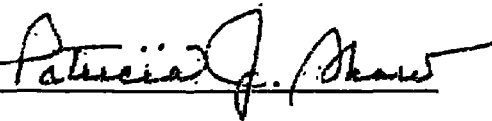


CSX TRANSPORTATION, INC.

By: 

Steven Potter
Assistant Vice President
Network Planning and
Joint Facilities

ATTEST

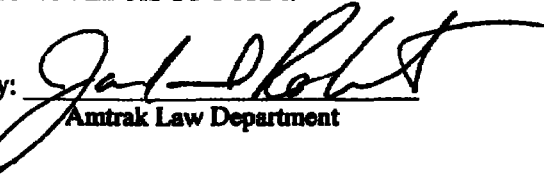


NATIONAL RAILROAD PASSENGER CORPORATION

By: , for

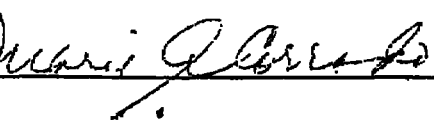
Joseph H. Boardman
Its: President and Chief Executive Officer

APPROVED AS TO FORM:

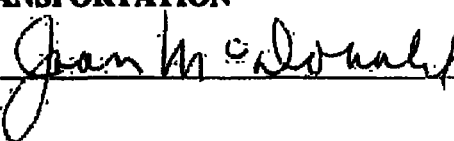
By: 
Amtrak Law Department

CONSENTED TO:

ATTEST



NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: 
Its:

(signature page to Hudson Line Operating, Management And Land And Track Lease Agreement)

APPENDIX A

Definitions.

“AAR” shall mean the Association of American Railroads.

“Agreement” shall mean this Hudson Line Operating, Management and Land and Track Lease Agreement Between National Passenger Railroad Corporation and CSX Transportation, Inc. Pertaining to the Hudson Line dated as of September 23, 2011.

“Amtrak” shall mean the National Railroad Passenger Corporation, its successors and assigns.

“Amtrak Employee” shall have the meaning given to it in Section 19 of this Agreement.

“Amtrak Improvements” shall have the meaning given to it in Section 5 of this Agreement.

“Amtrak Property” shall have the meaning given to it in Section 19 of this Agreement.

“Amtrak Trains” shall have the meaning given to it in Section 19 of this Agreement.

“Amtrak Ticket” shall have the meaning given to it in Subsection 19(b) of this Agreement.

“Ancillary CSXT/Amtrak Hudson Line Agreements” shall have the meaning given to it in Section 29 of this Agreement.

“Basic Agreement” shall have the meaning given to it in Section 17 of this Agreement.

“Claim” shall have the meaning given to it in Section 3 of this Agreement.

“Commencement Date” shall have the meaning given to it in Section 36 of this Agreement.

“Costs” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“CPR” shall mean the Canadian Pacific Railway Company.

“CPR Agreements” shall have the meaning given to it in the Recitals of this Agreement.

“CPR Train” shall have the meaning given to it in Subsection 19(p) of this Agreement.

“CSXT” shall mean CSX Transportation, Inc., a Virginia corporation.

“CSXT/Amtrak Transition Agreement” or “Transition Agreement” shall have the meaning given to it in Section 36 of this Agreement.

“CSXT Employee” shall have the meaning given to it in Section 19 of this Agreement.

“CSXT Improvements” shall have the meaning given to it in Section 5 of this Agreement.

“CSXT Property” shall mean all of the rights-of-way and associated real property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way and real property that connect with the Hudson Line and are owned, controlled or used exclusively by CSXT, being properties contiguous to the Hudson Line that were not leased to Amtrak under this Agreement.

“CSXT Trains” shall have the meaning given to it in Section 19 of this Agreement.

“D&H - CSXT New York Trackage Rights Agreement” shall mean that certain agreement dated as of July 12, 1999 between D&H and CSXT as successor to New York Central Lines LLC, pursuant to which D&H has certain overhead trackage rights between (1) Schenectady, NY and Oak Point Yard, NY with the right to access customers located in the Bronx or Queens via CSXT switching, and (2) between Oak Point Yard, NY and Fresh Pond Junction, NY to effect interchange with NY&A.

“Disposal” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“Environmental Claim” shall have the meaning given to it in Subsection 21(e) of this

Agreement.

“Environmental Contamination” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“Environmental Laws” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“Environmental Matters” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“Environmental Permits” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“EOT Unit” shall mean a caboose or other non-revenue rail car in a freight train for the use of the train’s crew during certain switching operations.

“Execution Date” shall have the meaning given to it in Section 36 of this Agreement.

“Existing Rights” shall have the meaning given to it in Section 7 of this Agreement.

“Force Majeure” shall have the meaning given to it in Section 22 of this Agreement.

“FRA” shall mean the Federal Railroad Administration.

“Governmental Authority” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“Hazardous Substances” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“High Level Platforms” shall have the meaning given to it in Subsection 8(e) of this Agreement.

“Hudson Line” shall mean, collectively, all of the Rail Properties that were conveyed pursuant to the Regional Rail Reorganization Act of 1973 and that are now owned by CSXT, or

in which CSXT has an interest, and over which CSXT operates a line of railroad from the point at which CSXT's real property and line of railroad are, as of the date of this Agreement. leased to, or otherwise subject to control of, Metro North Commuter Railroad at approximately milepost 75.7 in Poughkeepsie, NY to the westbound signal at CP11 at approximately milepost 169.77 in Hoffmans, NY, exclusive of the freight yard and building in Hudson, NY, and Sidetracks. (ii) all Facilities of CSXT that are used in the operation of the Amtrak owned "Post Road" line of railroad between approximately milepost 187.4 in Niverville, NY and milepost 199.5 in Rensselaer, NY, and (iii) including certain other real property owned by Amtrak, all of which is shown on Exhibit A. "Hudson Line" shall also include, without limitation, all tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, trestles, culverts, signals, crossing warning devices, communication lines, poles, radio masts, and any and all spare parts and materials, buildings, structures, facilities, improvements, fixtures, related maps, drawings, CADs and plans (collectively "Facilities") used in the operation of such line of railroad.

"Hudson Line Improvement Program" shall have the meaning given to it in this Agreement.

"Master Agreement" shall mean the AGREEMENT BETWEEN NATIONAL RAILROAD PASSENGER CORPORATION AND CSX TRANSPORTATION, INCORPORATED dated June 1, 1999, and all supplements thereto, such agreement and supplements being between CSXT and Amtrak.

"Master Lease Agreement" shall mean the Master Property Lease between National Railroad Passenger Corporation and CSX Transportation, Incorporated, dated June 1, 1999 and all supplements thereto, such agreement and supplements being between CSXT and Amtrak.

"Materials" shall have the meaning given to it in Section 36 of this Agreement.

“NYSDOT” shall mean the New York State Department of Transportation.

“NYSDOT/Amtrak Dispatching and Maintenance Agreement” shall mean the Agreement Between National Railroad Passenger Corporation (Amtrak) and New York State Department Of Transportation (NYSDOT) for the Dispatching and Right Of Way Maintenance of the Hudson Line, dated as of December __, 2011.

“NYSDOT/Amtrak Implementing Agreement” shall mean individually or collectively the project implementing agreement(s) titled "NYSDOT and NRPC Agreement - name of project - Comptroller Contract #. Project Identification # ".

“NYSDOT/Amtrak Service Outcomes Agreement” shall mean the Service Outcomes Agreement for Publicly-Funded Intercity Passenger Rail Investments by National Railroad Passenger Corporation and State of New York dated as of December __, 2011.

“Natural Resources” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“O&M Agreement” shall mean the Hudson Line Operating and Management Agreement.

“Permitted Uses” shall have the meaning given to it in Section 1 of this Agreement.

“Positive Train Control System” shall have the meaning given to it in title 49 U.S.C. 20157(i)(3).

“Quarterly Statement” shall have the meaning given to it in Section 2 of this Agreement.

“RCRA” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“Rail Freight Service” shall mean existing and future transportation by rail, in conformance with contract or common carrier freight obligations, of property and movable articles of every kind, character and description over the Hudson Line, including rail freight transportation service to current and future industries, customers and facilities located along the

Hudson Line, and supporting activities, over the Hudson Line, but excluding any detour movements of other railroads. Rail Freight Service expressly includes the performance of any term or condition of the CPR Agreements by any party thereto. Rail Freight Service shall be subject to all applicable railroad statutes and regulations, including Amtrak's preference set forth in 49 USC Section 24308(e).

"Railroad Operations" shall have the meaning given to it in Subsection 1(a) of the O&M Agreement.

"Rail Passenger Service" shall mean existing and future intercity rail passenger service as defined in title 49 U.S.C. 24102 and shall be subject to all applicable railroad statutes and regulations, including Amtrak's preference set forth in 49 USC Section 24308(e). In the event the consent necessary for the commencement of commuter service as defined in 49 U.S.C. 24102 on the Hudson Line is obtained, the parties will amend the definition of Rail Passenger Service accordingly.

"Release" shall have the meaning given to it in Subsection 21(e) of this Agreement.

"Remediation" shall have the meaning given to it in Subsection 21(e) of this Agreement.

"Rent" shall have the meaning given to it in Section 2 of this Agreement.

"Reserved Rights" shall have the meaning given to it in Subsection 32(a) of this Agreement.

"Sidetrack" shall mean tracks on CSXT Property or real property owned by a third party, on excluded parcels and/or beyond the border of the Hudson Line (with precise cut points to be mutually agreed to), and which are used to provide Rail Freight Service over such tracks to industries, customers and facilities located along the Hudson Line.

"Sidetrack Agreement" shall mean any agreement between CSXT and a shipper.

recipient, and/or other user of Rail Freight Services over a Sidetrack that governs the ownership, construction, maintenance, repair, and use of a Sidetrack.

“Solid Waste” shall have the meaning given to it in Subsection 21(e) of this Agreement.

“STB” shall mean the federal Surface Transportation Board.

“Term” shall have the meaning given to it in Section 36 of this Agreement.

“Transition Period” shall have the meaning given to it in Section 36 of this Agreement.

“UMLER” shall mean the Uniform Machine Language Equipment Register.

“Usage Fee” shall have the meaning given to it in Subsection 2(a) of the O&M Agreement.

“Wide Load Car” shall have the meaning given to it in Subsection 8(e) of this Agreement.

List of Exhibits

<u>Exhibit</u>	<u>Description</u>	<u>First Mention in Document</u>
A	Description of Hudson Line to be Operated, including: (i) Property to be Leased and (ii) Property Owned by Amtrak.	First "Whereas"
B	Personal Property to be Removed from the Hudson Line Pursuant to Section 1(f)	Section 1
C	Additional Assets Provided to Amtrak Pursuant to <u>Section 14</u>	Section 1
D	Assignment and Assumption Agreement	Section 13
E	Ancillary CSXT/Amtrak Hudson Line Agreements	Section 29
F	Service Plan	Section 3
G	Known Existing Occupancies and Agreements	Section 7(iii)
H	CSXT/Amtrak Transition Agreement	Section 1
Schedule A	Capital Improvements	Section 2(d)

EXHIBIT A

(i) Description of Hudson Line Property to be Leased

(ii) Description of Hudson Line Property Owned by Amtrak

EXHIBIT B

Personal Property to be Removed by CSXT Pursuant to Section 1(f)

TO BE DETERMINED PRIOR TO THE COMMENCEMENT DATE

EXHIBIT C

Additional Assets Provided to Amtrak Pursuant to Section 14¹

LOCATION	ASSET
MP 83 – Staatsburg	5500KW Propane Powered Generator
CP - 103	500KW Generator
CP -114	500KW Generator
CP - 124	500KW Generator
All Switch Locations	Leave 102 Locks as they are common between Amtrak and CSXT
Livingston Avenue Bridge	Spare parts associated with bridge. Thirty (30) days prior to the Commencement Date, CSXT to provide a list identifying spare parts expected to be on hand as of the Commencement Date.
Other Additional Assets, if any, to be mutually agreed thirty (30) days prior to Commencement Date	

¹ All Additional Assets to be provided in "as is" condition as of the Commencement Date.

EXHIBIT D

**ASSIGNMENT AND ASSUMPTION OF VARIOUS
AGREEMENTS, LEASES, LICENSES AND ORDINANCES**

FOR VALUE RECEIVED, in connection with that certain Operation, Maintenance and Land and Track Lease Agreement dated as of September 23, 2011 by and between CSX Transportation, Inc., hereinafter referred to as "Assignor," and National Passenger Railroad Corporation, hereinafter referred to as "Assignee" (the "Agreement"), Assignor does hereby (i) fully assign unto Assignee all of the right, title and interest of Assignor in those agreements, leases, licenses and ordinances, indicated on Exhibit D-1, attached hereto and made a part hereof; and partially assign unto Assignee the right, title and interest of Assignor in those agreements, leases, licenses and ordinances indicated on Exhibit D-2, attached hereto and made a part hereof. With respect to such partial assignment, Assignor's intent is to assign only so much of the instruments indicated on Exhibit D-2 as affects the property covered by said Agreement.

Assignee does hereby assume, to the extent of the interest hereby assigned, all of the covenants, promises and obligations of Assignor contained within the subject agreements, leases, licenses and ordinances. Assignor shall be entitled to retain any and all rentals, fees and the like received prior to the Commencement Date of the Agreement, without proration. Assignee shall be entitled to retain any and all rentals, fees and the like received prior to the expiration or earlier termination of the Agreement, without proration.

Upon the termination or expiration of the aforementioned Agreement, the assignments made by this instrument shall terminate. Within a reasonable time from the date of the termination or expiration of the Agreement, Assignee shall deliver to Assignor any amendments to the documents listed on Exhibits D-1 and D-2, and any new agreements entered into during the Term.

The effective date of this instrument is _____.

ASSIGNOR:

ATTEST:

Title: _____

By: _____

Title: _____

ASSIGNEE:

ATTEST:

Title: _____

By: _____

Title: _____

EXHIBIT E

Ancillary CSXT/Amtrak Hudson Line Agreements

EXHIBIT F

Service Plan

EXHIBIT G

Known Existing Occupancies and Agreements

TO BE DETERMINED PRIOR TO THE COMMENCEMENT DATE

EXHIBIT H

CSXT/Amtrak Transition Agreement

SCHEDULE A

Capital Improvements

Location	Project	Estimated Cost	Weight	Estimated Amount
Entire Corridor	Empire Corridor – Planning SDP/Tier I NEPA	\$4,500,000	0	\$0
Hudson Line	Empire South – Albany Schenectady Double Track	\$91,200,000	0.45	\$41,040,000
Hudson Line	Empire South – Grade Crossing Improvements	\$2,450,000	0.45	\$1,102,500
Hudson Line	Livingston Ave Bridge – PE/NEPA	\$4,000,000	0.45	\$1,800,000
Hudson Line	Hudson Subdivision: Signal Improvements	\$10,005,705	0.45	\$4,502,567
Hudson Line	Empire Corridor Capacity Improvements	\$83,045,365	0.45	\$37,370,414
Hudson Line	Livingston Ave Bridge		0.45	
Hudson Line	Positive Train Control		0.45	
Hudson Line	West Albany Yard modifications	\$1,510,000	0.45	\$679,500
Empire West	Empire West – Rochester Area Third Track	\$58,115,410	0.85	\$49,398,099
Empire West	Syracuse: Empire Congestion Relief	\$23,183,252	0.85	\$19,705,764
Empire West	Rochester Intermodal Station – PE/NEPA	\$2,000,000	0	\$0
Empire West	Grade Crossing Improvements - Dublin, Beaver Meadow, Ivson, and Cooks Roads	\$750,000	0.85	\$637,500
Empire West	Grade Crossing Improvements - Sand Hill and Fox Road	\$1,000,000	0.85	\$850,000
Empire West	Grade Crossing Improvements - Quaker and Canandaigua Roads	\$1,000,000	0.85	\$850,000
other	Kingston Siding	\$1,652,000	1	\$1,652,000
other	Grade Crossing Improvements - Various Locations	\$2,400,000	0.85	\$2,040,000
other	Selkirk bypass	\$63,000,000	1	\$63,000,000

NOTES

1. Percentage weights will be applied for the first six years of the Term and adjusted thereafter in accordance with the Agreement.
2. The inclusion of any project on this Schedule A does not give rise to, modify or annul either party's obligation to fund or implement any such project that may exist by virtue of this Agreement, any other agreement, operation of law or otherwise; neither does it waive any rights either party may have in connection thereto, or represent the obligation of Amtrak or the State to waive or request the waiver of any applicable requirements for or conditions to such funding.